APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 81-1301 September Term, 1981

Jon Garth Murray, et al., Appellants — Civil Action No. 80-01475

ARGUED: 10-26-81

v.

Angela Marie Buchanan, Treasurer of the United States, et al.

BEFORE: Robinson, Chief Judge, Wright, Tamm, MacKinnon, Robb, Wilkey, Wald, Mikva, Edwards, Ginsburg and Bork, Circuit Judges

O R D E R

On consideration of the petition of Anne Neamon, pro se, National Coordinator, Citizens for God & Country, for permission to participate as amicus curiae, it is ORDERED by the Court en banc that the aforesaid petition is denied.

Per Curiam

FOR THE COURT:

GEORGE A. FISHER, Clerk

BY:
Robert A. Bonner
Chief Deputy Clerk

United States Court of Appeals for the District of Columbia Circuit

FILED MAY 25, 1982

GEORGE A. FISHER, Clerk

Notice: This opinion is subject to formal revision before publication in the Federal Reporter or U.S.App.D.C. Reports. Users are requested to notify the Clerk of any formal errors in order that corrections may be made before the bound volumes go to press.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 81-1301

JON GARTH MURRAY, ET AL., APPELLANTS

v.

ANGELA MARIE BUCHANAN, TREASURER OF THE UNITED STATES, ET AL.

Appeal from the United States District Court for the District of Columbia

(CA 80-01475)

Argued October 26, 1981

Decided March 9, 1982

Judgment entered this date ←

Vacated May 25, 1982

Ronald A. Lindsay, with whom *Myra C. Selby* was on the reply brief, for appellants.

Joel D. Joseph filed the brief for appellants.

Michael Davidson, Senate Legal Counsel, with whom *Charles F.C. Ruff*, United States Attorney, *Royce C. Lamberth*, *Kenneth M. Raisler*, *R. Craig Lawrence*, Assistant United States Attorneys, for Buchanan, *et al.*, *M. Elizabeth Culbreth*, Deputy Senate Legal Counsel,

Bills of costs must be filed within 14 days after entry of judgment. The court looks with disfavor upon motions to file bills of costs out of time.

Paula A. Sweeney, Assistant Senate Legal Counsel, for Senate, and *Daniel J. Popeo*, *Paul D. Kamenar*, and *Nicholas E. Calio* for Senator Helms, *et al.*, were on the joint brief for appellees.

Stanley M. Brand, General Counsel, and *Steven R. Ross*, Assistant Counsel, United States House of Representatives, were on the brief for appellees O'Neill and Ford.

Before: BAZELON, *Senior Circuit Judge*, MACKINNON and GINSBURG, *Circuit Judges*.

Opinion for the Court filed by *Circuit Judge* GINSBURG.

Dissenting opinion filed by *Circuit Judge* MACKINNON.

GINSBURG, *Circuit Judge*: This is an action brought by federal taxpayers who are also atheists. They seek to enjoin the Treasurer of the United States and other federal officials from expending and receiving funds under statutes [1] that authorize payment of salaries and certain expenses for the chaplains of the Senate and the House of Representatives. They assert entitlement to injunctive relief, and a declaration that the statutes are unconstitutional, on the ground that Congress' directive commanding the payment of federal funds for the chaplains' services violates the establishment clause of the First Amendment.[2] The district court dismissed the complaint without considering the merits of the constitutional claim; it held that plaintiff-appellants lacked standing and that the claim presented a nonjusticiable political question.[3] We too do not reach the merits, and intimate no view on the question whether the challenged expendi-

---

[1] 2 U.S.C. §§ 61d, 61d-1, 61d-2, 84-2 (1976 & Supp. IV 1980).

[2] Consonant with plaintiff-appellants' allegation of taxpayer standing, *see* I. *infra*, they challenge only the expenditure of funds, not the congressional practices of electing a chaplain and having him open each legislative session with prayer.

[3] Murray v. Morton, 505 F.Supp. 144 (D.D.C. 1981).

tures violate the establishment clause.[4] We hold, however, that appellants, as taxpayers, have standing to raise this claim and that it is justiciable. Thus we reverse and remand for further proceedings.[5]

I. STANDING

Appellants' status as taxpayers is undisputed. It is also undisputed that the challenged statutes are an exercise by Congress of its spending power under Article I, section 8 of the Constitution. *See, e.g.*, Memorandum of Points and Authorities in Support of Intervening Defendants' Motion to Dismiss and in Opposition to Plaintiffs' Motion for Summary Judgment at 5, *Murray v. Morton*, 505 F.Supp. 144 (D.D.C. 1981). The total expenditure under these statutes is approximately $80,000 annually.[6]

A suit resembling this one was before the court in *Elliott v. White*, 23 F.2d 997 (D.C. Cir. 1928). The plaintiff in *Elliott*, alleging standing as a United States citizen, also sought a decree enjoining the payment of salaries to congressional chaplains. Affirming the dismissal of Elliott's complaint for lack of standing, this court relied exclusively on the Supreme Court's holding in *Frothingham v. Mellon*, 262 U.S. 447 (1923). That venerable decision held that Mrs. Frothingham, who brought suit as a United States citizen and federal taxpayer, had no standing to seek to prohibit the Secretary

---

[4] Any hypotheses in this opinion relating to the constitutional claim the complaint tenders are made for the sole purpose of determining appellants' standing and the justiciability of the question they present.

[5] Appellants have briefed the establishment clause issue in this court but stated at oral argument that they would seek on remand to develop a more complete record on the history of the challenged practices. Appellees will also be free on remand to add to the record so that the district court, and this court on any subsequent appeal, will be equipped to make the constitutional determination on the basis of full presentations by all parties.

[6] Brief for Appellants at 2.

of the Treasury from making expenditures under the Maternity Act of 1921, a measure Mrs. Frothingham attacked as beyond Congress' authority under Article I, section 8, and violative of prerogatives reserved to the states by the Tenth Amendment. This court explained its ruling in *Elliott* in three paragraphs; it summarized the complaint, declared the case controlled by *Frothingham*, and quoted several lines from that opinion. In the case now before us, the district court found *Elliott* controlling.

Frothingham remains a leading authority on taxpayer standing. *See Valley Forge Christian College v. Americans United for Separation of Church & State, Inc.*, 50 U.S.L.W. 4103, 4106 (U.S. Jan. 12, 1982); *Flast v. Cohen*, 392 U.S. 83, 104-05 (1968). *Flast v. Cohen*, however, announced a significant "exception to the *Frothingham* principle," *Valley Forge*, 50 U.S.L.W. at 4107. The particularized instruction stated in *Flast*, and reiterated most recently in *Valley Forge*, must guide our determination whether the *Elliott* court read *Frothingham* too broadly in declaring it a bar to a taxpayer's (as well as a citizen's) establishment clause challenge to the compensation of chaplains. We conclude that appellants' taxpayer status here is legally indistinguishable from that held sufficient by the Supreme Court to confer standing in *Flast*. We therefore hold that *Elliott*, to the extent it addressed taxpayer standing,[1] has been superseded by *Flast* and that appellants do have standing.

---

[1] In an effort to avoid the *Frothingham* precedent, then five years old, the plaintiff in *Elliott* relied upon citizen, rather than taxpayer, standing since *Frothingham* addressed explicitly only the latter. Our decision does not embrace any theory of citizen standing to challenge government action alleged to contravene the establishment clause. *Cf.* Americans United for Separation of Church & State, Inc. v. United States Dep't of Health, Educ. & Welfare, 619 F.2d 252 (3d Cir. 1980) (announcing such a theory), *rev'd sub nom.* Valley Forge Christian College v. Americans United for Separation of Church & State, Inc., 50 U.S.L.W. 4103 (U.S. Jan. 12,

In *Flast*, the plaintiffs challenged, on establishment clause grounds, the expenditure of federal funds for direct aid to sectarian schools. They asserted that their status as federal taxpayers gave them standing. The Court found that status sufficient to confer standing when two "nexus" requirements were met:

> First, the taxpayer must establish a logical link between that status and the type of legislative enactment attacked. Thus, a taxpayer will be a proper party to allege the unconstitutionality only of exercises of congressional power under the taxing and spending clause of Art. I, § 8, of the Constitution. . . . Secondly, the taxpayer must establish a nexus between that status and the precise nature of the constitutional infringement alleged. Under this requirement, the taxpayer must show that the challenged enactment exceeds specific constitutional limitations imposed upon the exercise of the congressional taxing and spending power and not simply that the enactment is generally beyond the powers delegated to Congress by Art. I, § 8.

392 U.S. at 102-03. The *Flast* challenge, the Court determined, satisfied the two requirements:

> [Appellants'] constitutional challenge is made to an exercise by Congress of its power under Art. I, § 8, to spend for the general welfare, and the challenged program involves a substantial expenditure of federal tax funds. In addition, appellants have alleged that the challenged expenditures violate the Establishment and Free Exercise Clauses of the First Amendment.

Id. at 103 (footnote omitted).

The precise factors the Court found sufficient in *Flast* to confer standing are present here: appellants challenge an exercise of the congressional spending power, and

---

1982). The Supreme Court's *Valley Forge* decision rejected both citizen standing, 50 U.S.L.W. at 4108-10, and taxpayer standing in circumstances that the *Flast* exception did not accommodate, *id.* at 4106-08. *See* pp. 6-7 *infra*.

they allege that the power has been exercised in a manner inconsonant with the establishment clause.[8] The double nexus test of *Flast* requires no more.[9]

Valley Forge, *supra*, the Supreme Court's most recent expression in point, reaffirmed *Flast* while declining to extend *Flast*'s reasoning to cases involving exercises of official authority other than the power of Congress to spend money. The Court held in *Valley Forge* that federal taxpayers lacked standing to maintain an establishment clause challenge to executive action (disposition of surplus real property to a church-related college) taken under a statute Congress passed as an exercise of authority conferred by the property clause, Article IV, section 3, clause 2, of the Constitution. The *Valley Forge* decision ruled out taxpayer challenges to executive, as distinguished from congressional, action, and challenges predicated on a source of federal authority other than Congress' taxing and spending power. With notable precision, however, the Court adhered to the *Flast* precedent: taxpayers *qua* taxpayers have standing to challenge as incompatible with the establishment clause "congressional exercises of the power to tax and spend conferred by Art. I, § 8, of the Constitution." 50 U.S.L.W. at 4104; *see id.* at 4107.

---

[8] Although the Court cited both the establishment and free exercise clauses in the passage quoted above, it made clear elsewhere in the opinion that "appellants' Establishment Clause claim is sufficient to establish the nexus between their status and the precise nature of the constitutional infringement alleged." 392 U.S. at 104 n.25.

[9] *See* 392 U.S. at 114 (Stewart, J., concurring) ("I join the judgment and opinion of the Court, which I understand to hold only that a federal taxpayer has standing to assert that a specific expenditure of federal funds violates the Establishment Clause . . . ."); *id.* at 115 (Fortas, J., concurring) ("I would confine the ruling in this case to the proposition that a taxpayer may maintain a suit to challenge the validity of a federal expenditure on the ground that the expenditure violates the Establishment Clause.").

Even more plainly than in *Flast* the challenge in this case is to congressional, not executive, action. *Cf. Public Citizen, Inc. v. Simon*, 539 F.2d 211, 216-18 (D.C. Cir. 1976) (*executive* spending is not "subject to taxpayer suit on a test analogous to *Flast*"). And, most significantly in terms of the *Valley Forge* analysis, the challengers before us complain of an "'exercise by Congress of the taxing and spending power conferred by Art. I, § 8.'" 50 U.S.L.W. at 4107 (quoting *Flast*, 392 U.S. at 104).[10] Given these two characteristics of the claim in suit, characteristics *Valley Forge* described as determinative of taxpayer standing, federal judges are not at liberty to avoid the force of the *Flast* precedent and thereby escape the substantive inquiry the complaint in this case invites.

Two differences between *Flast* and the case before us are urged by appellees as grounds for distinguishing *Flast*. Neither undercuts appellants' standing. The first is that the expenditures in this case, roughly $80,000 annually, are far less than the billion-dollar appropriation at issue in *Flast*, *see* 392 U.S. at 103 n.23, and therefore are not "substantial." Assuming arguendo that an annual expenditure of $80,000 might be regarded as insubstantial for some purposes,[11] we nonetheless believe *Flast*

---

[10] *See also* 50 U.S.L.W. at 4107-08 (contrasting *Flast* with United States v. Richardson, 418 U.S. 166, 174-75 (1974), and Schlesinger v. Reservists Committee to Stop the War, 418 U.S. 208, 228 (1974), decisions rejecting taxpayer standing because the challenges there presented were not addressed to the "taxing or spending power"). *Valley Forge* makes clear the dissent's misplaced reliance on Public Citizen, Inc. v. Simon, *supra*, a decision rejecting "a proposed extension of *Flast*," 539 F.2d at 213, to cover challenges to *executive* action, *see id.* at 216, alleged to contravene the appropriations clause of the Constitution (Article I, section 9, clause 7) and a statute (31 U.S.C. § 628 (1976)), *see* 539 F.2d at 213.

[11] We note, however, that this amount is eight times the jurisdictional amount until recently required for federal question cases not covered by a specific grant of jurisdiction, 28 U.S.C. § 1331 (1976) (amended 1980), and still required for

secures appellants' standing. The Court quoted approvingly James Madison's observation that "the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever." [12] Though the Court mentioned that it had before it "a substantial expenditure of federal tax funds," it plainly said nothing to suggest that the size of an appropriation was an element of its two-pronged standing test.[13]

The second difference appellees press between *Flast* and the case at hand is that this case, unlike *Flast*, is alleged to involve only the internal affairs of Congress. We shall consider this allegation more fully in connection with the political question doctrine. We note now that it is simply irrelevant to the standing inquiry: under

---

diversity-of-citizenship cases, 28 U.S.C. § 1332 (1976). In the context of access to federal courts, at least, Congress does not consider $80,000 insubstantial.

[12] *Memorial and Remonstrance Against Religious Assessments*, in 2 Writings of James Madison 183, 186 (G. Hunt ed. 1901), *quoted in Flast*, 392 U.S. at 103. The same passage was quoted approvingly in the concurring opinions of Justices Douglas, *id.* at 108, and Stewart, *id.* at 114.

[13] *See also* Everson v. Board of Educ., 330 U.S. 1, 16 (1947) ("No tax . . ., large or small, can be levied to support any religious activities or institutions . . . ."); Valley Forge Christian College v. Americans United for Separation of Church & State, Inc., 50 U.S.L.W. 4103, 4113-14 (U.S. Jan. 12, 1982) (Brennan, J., dissenting). The Court's statement in *Valley Forge* that to have standing one must " 'personally . . . benefit in a tangible way from the court's intervention,' " *id.* at 4107 n.17 (quoting Warth v. Seldin, 422 U.S. 490, 508 (1975)), does not point to a different conclusion. In taxpayer suits that fall within the *Flast* exception, this requirement means only that the *government* must benefit financially from a decision favorable to plaintiffs, not that plaintiffs themselves must show an appreciable decrease in their tax burdens. *See generally Valley Forge*, 50 U.S.L.W. at 4107 n.17; Flast v. Cohen, 392 U.S. 83 (1968).

the *Flast* test, taxpayer-appellants' standing is properly predicated on (1) the use of tax dollars to fund the chaplaincies, and (2) the allegation of an establishment clause violation, *not* on any other impact the legislation in question may have upon the challengers.[14]

II. Political Question

"[T]he concept of justiciability, which expresses the jurisdictional limitations imposed upon federal courts by the 'case or controversy' requirement of Art. III, embodies both the standing and political question doctrines . . . ." *Schlesinger v. Reservists Committee to Stop the War*, 418 U.S. 208, 215 (1974). Although these two doctrines fall under a common heading ("justiciability"), "[e]ach . . . poses a distinct and separate limitation." *Id.* The standing inquiry always focuses on *who* is bringing the action: "The question whether a particular person is a proper party to maintain the action does not, by its own force, raise separation of powers problems related to improper judicial interference in areas committed to other branches of the Federal Government." *Flast v. Cohen*, 392 U.S. at 100. The political question doctrine is unconcerned with the identity of the plaintiff, instead examining whether the *issue* is one appropriate for judicial determination. *E.g., Coleman v. Miller*, 307

---

[14] Conceivably the effect of the chaplains' activities on persons other than Members of Congress is relevant to the merits of the First Amendment claim. At present we neither foreclose this possibility nor assert it to be the case.

We also note that, because our decision on standing is controlled by *Flast*, we need not consider the relevance or persuasiveness on this point of the decisions by courts that have entertained challenges to the funding of chaplains in state legislatures, Chambers v. Marsh, 504 F.Supp. 585 (D. Neb. 1980), *cross-appeals pending*, Nos. 81-1077, 81-1088 (8th Cir.); Colo v. Treasurer, 79 Mass. Adv. Sh. 1893, 392 N.E.2d 1195 (1979). Both decisions uphold the plaintiffs' standing, so they are at least in harmony with our determination.

U.S. 433 (1939).[15] "[T]he federal courts will not adjudicate political questions . . . primarily because of the separation of powers within the Federal Government." *Powell v. McCormack*, 395 U.S. 486, 518 (1969). *See also The Supreme Court, 1980 Term*, 95 Harv. L. Rev. 91, 198-99 (1981) ("The political question doctrine . . . is part and parcel of separation-of-powers doctrine."). The separation-of-powers concerns that make a question "political" are independent of the plaintiff's interest in that question.

The analytically distinct nature of the two doctrines, standing and political question, indicates that the district court improperly relied on *Elliott v. White*, 23 F.2d 997 (D.C. Cir. 1928), as a political question precedent. The opinion in that case nowhere refers to the political question doctrine. Rather, the court in *Elliott* reasoned, tersely, that just as Mrs. Frothingham was without standing "as a mere taxpayer [and citizen]" to challenge federal expenditures, so too was Elliott. We reject the district court's homogenized approach to the standing and political question inquiries in this case. In our view, Supreme Court decisions on what constitutes a political question cannot establish "[t]he continuing vitality of *Elliott* in light of *Flast*," *Murray v. Morton*, 505 F. Supp. 144, 146 (D.D.C. 1981), for they speak to a question separate from the single issue, standing, considered and decided in *Elliott*.

Having determined that the issue—whether the constitutionality of Congress' funding of its chaplains is a political question—is one not previously addressed by this court, we must decide whether any element of the polit-

---

[15] *Compare* Valley Forge Christian College v. Americans United for Separation of Church & State, Inc., 50 U.S.L.W. 4103, 4106 (U.S. Jan. 12, 1982) ("Those who do not possess Art. III standing may not litigate as suitors in the courts of the United States."), *with* p. 12 & note 17 *infra* (courts may not adjudicate political questions, regardless of the suitor's identity, interest, or inquiry).

ical question doctrine requires us to hold this case nonjusticiable. Criteria for application of the political question doctrine were set out in *Baker v. Carr*, 369 U.S. 186, 217 (1962), and *Powell v. McCormack*, 395 U.S. 486, 518-19 (1969). Summarizing the ingredients of the doctrine, the Court said:

> It is apparent that several formulations which vary slightly according to the settings in which the questions arise may describe a political question, although each has one or more elements which identify it as essentially a function of the separation of powers. Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Baker v. Carr, 369 U.S. at 217.

We need not examine each of these factors seriatim. The more open-ended of them go to judicial competence, which is not genuinely at issue here. The First Amendment challenge this case presents is of the sort traditionally decided by courts. As the district court noted, "a decision on the merits 'would require no more than an interpretation of the Constitution.'" *Murray v. Morton*, 505 F.Supp. at 146 (quoting *Powell v. McCormack*, 395 U.S. at 548). We do, however, examine the two factors dominantly relied upon by the district court to justify abstention from decision: the "impossibility" of court adjudication "without expressing lack of the respect due

[Congress]"; and the "constitutional commitment" to Congress position urged most insistently by appellees.

The district court determined that a court could not "consistently with the respect which courts owe to coordinate branches of government . . . undertake an 'independent resolution' of the question of Congress' power to compensate its Chaplains." *Murray v. Morton*, 505 F.Supp. 144, 147 (D.D.C. 1981). We disagree. In *Powell v. McCormack*, 395 U.S. 486 (1969), the Court independently resolved the question of Congress' power to exclude one of its own members. The Court specifically noted that this was an exercise of "the traditional role accorded courts to interpret the law" and not any indication of disrespect to Congress. *Id.* at 548-49. We discern no basis for concluding that the constitutional interpretation sought here intrudes on congressional territory more than that in *Powell*.[16] A question characterized "political" may not be addressed by courts at all; regardless of the challenger, questions so labeled are nonjusticiable.[17]

---

[16] Mindful of *Powell*, the district court qualified its position that adjudication of this case on the merits could not be reconciled with respect for Congress by suggesting that abstention might not be in order if a Senator or Representative, rather than "these particular taxpayers," filed suit. 505 F. Supp. at 147. As we pointed out earlier, *see* pp. 9-10 *supra*, the district court's opinion amalgamates the standing and political question inquiries instead of treating the two as analytically distinct. The district court did not elaborate its apparent view that a legislator may have standing to challenge the funding of chaplaincies, although a taxpayer does not. *But cf.* Riegle v. Federal Open Mkt. Comm., 656 F.2d 873 (D.C. Cir.), *cert. denied*, 102 S. Ct. 636 (1981). For recent commentary on calls for judicial relief by legislators who have not carried the day in the political arena, *see* McGowan, Congressmen in Court: The New Plaintiffs, 15 Ga. L. Rev. 241 (1981).

[17] *See, e.g.*, Goldwater v. Carter, 444 U.S. 996, 1005-06 (1979) (Rehnquist, J., concurring in the judgment).

The district court, believing the question presented in this case to be "political," assiduously avoided any indication of

Respect for the judgment of Congress may well require deference in a host of settings. As the Supreme Court recently stated, however, "deference does not mean abdication." *Rostker v. Goldberg*, 101 S. Ct. 2646, 2654 (1981).

We turn now to the prime ingredient of the political question doctrine[18] and inquire whether the constitutionality of the funding of chaplaincies is an issue textually committed by the Constitution to congressional determination. Four clauses were cited by the district court

---

its views on the merits. In stark contrast, the dissenting opinion concentrates on "the merits of the underlying claim at issue," on the novel theory that to decide whether a question is "political" a court must first consider the case "on the merits." *See* Dissenting Op. note 4 and accompanying text. If the theory of the dissent is correct, then indeed there is no political question doctrine, there is only an obfuscating label pinned to a decision on the merits. So long as the Supreme Court maintains that there is a political question doctrine, and that the concept denotes issues that are "nonjusticiable," we must disagree with the dissent's "'merits first' type of analysis." If the question here is "political," as the dissent believes it is, the merits should not be addressed at all; if it is not political, the merits should be addressed initially by a court of first instance, not by a court of review. *See* note 5 *supra*.

[18] For the view that "all the [political question] doctrine can defensibly imply is that the courts are called upon to judge whether the Constitution has committed to another agency of government the autonomous determination of the issue raised, a finding that itself requires interpretation," *see* H. Wechsler, Principles, Politics and Fundamental Law 11-14 (1961). *But cf.* A. Bickel, The Least Dangerous Branch 125-26, 184 (1962) (courts have in fact exercised "broad discretion" beyond constitutional interpretation). *See also* Henkin, Is There a "Political Question" Doctrine?, 85 Yale L.J. 597 (1976) (concluding that in no case did the Supreme Court have to use the phrase "political question" because in fact the Court did review the government action at issue and determined that it was within the constitutional authority of the President or Congress).

as supporting an inference of textual commitment. Article I, section 2, clause 5 says the House "shall chuse their Speaker and other Officers," and Article I, section 3, clause 5 declares that the Senate "shall chuse their other Officers, and also a President pro tempore." [19] Article I, section 5, clause 2 provides that "[e]ach House may determine the Rules of its proceedings." Article I, section 6 dictates that "for any Speech or Debate in either House, [Senators and Representatives] shall not be questioned in any other Place." [20]

---

[19] Appellants point out that the records of the Constitutional Convention do not indicate any discussion of the clauses, adopted without dissent, authorizing Congress to choose its officers. *See* 2 M. Farrand, The Records of the Federal Convention of 1787, at 231, 239 (1911). Justice Story described the propriety of the provision for the Senate's choice as "obvious." 1 J. Story, Commentaries on the Constitution of the United States § 741, at 544 (5th ed. M. Bigelow 1905) (1st ed. Boston 1833). He commented that the privilege for the House improved upon the British system, under which the king had approval power as to the speaker elected by the House of Commons. *Id.* § 687. In that context, he stated that the House had the exclusive right to choose its speaker "without any appeal to, or approval by, any other department of the government." *Id.* § 687, at 506. He explicitly identified as the improvement Article I, section 2, clause 5 made, the avoidance of friction between legislative and executive branches. It is unlikely that he had in mind any issue of the sort this case presents, for his comparison was to a system, Great Britain's, in which courts had no constitutional review function.

[20] We do not address the immunity from suit under the speech or debate clause of individual legislators or legislative employees, an issue that has not been fully briefed. Because there are other defendants against whom relief can be obtained, and because declaratory relief may be available, any such immunity does not destroy the justiciability of this cause. *See* Powell v. McCormack, 395 U.S. 486, 501-06, 517-18 (1969). Indeed, if appellants prevail on the merits, injunctive relief will be effective if it simply prohibits executive authorities from disbursing funds.

We read these clauses to mean that Congress may elect officers and set rules for the conduct of business within the walls of the legislative chambers without intrusion by the executive and, with one overriding limitation, free from interference by the judiciary. As the Supreme Court expressed that limitation in a statement from which there has been no retreat, "[Congress] may not by its rules ignore constitutional restraints or violate fundamental rights." *United States v. Ballin*, 144 U.S. 1, 5 (1892).[21]

To test the thesis that spending public money, pursuant to Article I, section 8, to fund chaplains' offices is a matter textually committed to Congress, we posed "[a] simple hypothetical" at oral argument. *See Goldwater v. Carter*, 444 U.S. 996, 999 (1979) (Powell, J., concurring). Suppose Congress, instead of merely retaining and funding chaplains' offices, declared that only white Baptist ministers could fill the offices. We inquired whether the courts should refuse to entertain on "political question" grounds a taxpayer's suit for injunctive relief raising First and Fifth Amendment objections. In our hypothetical case, as in the actual case before us, the halls of Congress set the boundaries of the activity. The hypothetical case may be improbable in fact and far more readily answered in law, but "the nature of the legal issue presented is no different from the issue presented in the case before us. In both cases, the Court would interpret the Constitution . . . ." *Id.* at 1000.

---

[21] This court has observed that the general rule that "there is no warrant for the judiciary to interfere with the internal procedures of Congress" applies "where constitutional rights are not violated." Exxon Corp. v. FTC, 589 F.2d 582, 590 (D.C. Cir. 1978) (MacKinnon, J.), *cert. denied*, 441 U.S. 943 (1979). *Cf.* Consumers Union of United States, Inc. v. Periodical Correspondents' Ass'n, 515 F.2d 1341, 1347-48 & n.13 (D.C. Cir. 1975) (stopping short of resting on "political question" abstention with respect to a House rule because of contention that the rule ignored constitutional restraints).

Counsel for appellees suggested at oral argument that the hypothetical case would not attract "political question" characterization. But that label, he maintained, appropriately attends the practice of funding chaplains' offices so long as Congress adheres to the pattern in place at the birth of the nation. The hypothetical case contrasts with the real one because Congress in fact is following only its historically established pattern in funding the chaplaincies.[22] This distinction indicates that a different analysis of the two cases under the First Amendment might be required, and that, accordingly, the decision on the merits in each might be different; it provides no principled ground for a court's refusal to measure the challenged practice against the governing constitutional standard.

We point out, finally, the further support *Powell v. McCormack*, 395 U.S. 486 (1969), supplies for our conclusion that the question appellants seek to air in court has not been textually committed to congressional determination free from constitutional review by the judiciary. In *Powell*, the Supreme Court interpreted the Article I, section 5, clause 1 directive that "[e]ach House shall be the Judge of the . . . Qualifications of its own Mem-

---

[22] As indicated earlier, *see* note 2 *supra*, appellants rely on *Flast* to establish their standing and have therefore limited their challenge to Congress' appropriation of public funds to finance the chaplaincies. It is arguable that Congress' appointment of a chaplain and his performance of his duties might be cast as a wholly internal congressional concern or activity immune from judicial review so long as Article I, section 8 power to tax and spend for the general welfare is not implicated. We note in this regard that in the late 1850s, for a two-year period in the Senate and three years in the House, Congress did not appoint and pay chaplains. Instead, it invited, without providing for compensation, a different chaplain each week from the District of Columbia. *See* Joint Brief of Executive Branch and Senate Appellees and Intervenors at 12 n.* (citing Cong. Globe, 35th Cong., 1st Sess. 13-14, 28 (1857)).

bers."[23] The qualifications clause at issue in *Powell* assigned to Congress in the first instance the task of managing an aspect of its internal affairs, yet the Court held that Congress' performance of that task was subject to constitutional oversight exercised by the judiciary. It was the ultimate responsibility of the courts to say what Article I, section 5, clause 1 means. The provisions allowing each house of Congress to choose its own officers similarly assign Congress a prerogative, but in our view they could afford no more solid support than the qualifications clause does for finding a textual commitment that insulates congressional action from judicial review.[24]

III. Conclusion

The district court considered itself bound by *Elliott v. White*, 23 F.2d 997 (D.C. Cir. 1928), to dismiss the complaint "unless and until the Court of Appeals or the Supreme Court decides otherwise." *Murray v. Morton*, 505 F.Supp. 144, 147 (D.D.C. 1981). We do so today. *Elliott*, we hold, has been superseded by *Flast* with respect to standing, and it did not address the political question doctrine. Neither *Elliott* nor any other decision pre-

---

[23] The Court undertook a lengthy historical analysis to discern the meaning of the clause. *See* 395 U.S. at 518-48. This case occasions no need for a similar analysis. The two clauses that give Congress power to choose its officers were uncontroversial, *see* note 19 *supra*, and there is little historical basis for giving them meaning beyond what is plain on their face.

[24] Indeed, the qualifications clause at issue in *Powell* seems by its language to be a more plausible example of textual commitment to Congress than the clauses at issue here. The use of the definite article "the" in the qualifications clause connotes an element of exclusivity, and the word "Judge" arguably suggests that Congress is to replace the judiciary in determining qualifications of its members. Clauses that say each house "shall chuse" officers do not contain these linguistic elements suggesting preclusion of judicial review.

cludes this suit.[25] In addition, we hold that the constitutionality of payment to congressional chaplains is not, under the tests announced by the Supreme Court, a political question. The issue is a proper one for resolution by the courts, and this case is remanded to the district court so that it may undertake such a resolution.

Reversed and remanded for further proceedings consistent with this opinion.

---

[25] The district court noted that a complaint raising identical issues and brought by one of the same plaintiffs was earlier dismissed. O'Hair v. Nixon, Civ. Action No. 410-73 (D.D.C. Mar. 21, 1973). Although the district court did not so rule, counsel for appellees asked in the briefs that we hold that dismissal res judicata as to the present suit. We understand counsel to have conceded at oral argument, however, that the dismissal in that case, based on the quashing of service of process on the President, did not have preclusive effect. Since the dismissal did not operate as an adjudication on the merits, it is no bar to the present action. *See* Fed. R. Civ. P. 41(b); Restatement (Second) of Judgments § 48.1 (Tent. Draft No. 1, 1973) (judgment for defendant, though valid and final, does not bar another action on the same claim when the judgment is one of dismissal for lack of jurisdiction; such a judgment is preclusive only on the very point at issue, in this instance, the President's amenability to suit).

MACKINNON, *Circuit Judge* (dissenting): Appellants' claims against the payment of legislative chaplains must be dismissed (1) if appellants do not have standing to bring the suit, or (2) if the issues involved are non-justiciable within the purview of the political question doctrine. *Schlesinger v. Reservists Committee to Stop the War*, 418 U.S. 208, 215 (1974). Neither of those hurdles is cleared here. Accordingly, in my judgment we should affirm the holding of the District Court.

I. *The Political Question Doctrine*

As the Supreme Court noted in *Baker v. Carr*, 369 U.S. 186, 217 (1962),

> Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; . . . or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government . . .

Both of these criteria are met here.

A. Textual Commitment

The Constitution textually commits to the Senate and the House of Representatives the exclusive authority to choose their officers and determine their rules of proceedings. It provides that (1) "[t]he House of Representatives shall chuse their Speaker and other officers . . . ," U.S. Const. art. I, § 2, cl. 5; (2) "[t]he Senate shall chuse their other officers . . . ," *Id.*, art. I, § 3, cl. 5; and (3) "[e]ach house may determine the Rules of its proceedings," *Id.*, art. I, § 5, cl. 2. Pursuant to these provisions, when the First Congress met in 1789 after the adoption of the Constitution, the first order of business in the Senate, after the adoption of the procedural rules,

was to establish the Office and elect a Chaplain.[1] The House appointed its Chaplain the following week.[2] At some later time both Houses assigned to their chaplains the duty of opening daily sessions of the respective houses with an invocation, and enacted a statute prescribing their respective compensation. 2 U.S.C. §§ 61d, 61d-1, 61d-2, 84-2 (1976 & Supp. IV 1980).

Appellants attack the payments to the chaplains as violating the Constitution and assert that the above quoted provisions of Article I of the Constitution do *not* give Congress the right to spend public funds for such purpose.

That contention assumes a narrow reading of the quoted provisions of Article I that, in my opinion, is not justified. The decision of the Senate and the House to compensate one of their duly elected officers from the legislative appropriation for performance of his historical duties to Congress is a judgment made pursuant to and in execution of the powers conferred on the Senate and the House to "chuse their . . . officers" and "to determine the Rules of [their] proceedings." Under the doctrine of implied federal power, *see McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819), the enactment of a statute authorizing the expenditure of federal monies for compensation of chaplains represents a legitimate exercise of Congress' incidental power to legislate in furtherance of enumerated constitutional ends. Payment of the chaplains, in short, is clearly concomitant to Congress' constitutionally prescribed right to choose those officers in the first instance. It is therefore an act that is itself *textually*

---

[1] Right Reverend Samuel Provost, elected Chaplain of the Senate April 25, 1789, Annals of Congress, 21.

[2] Reverend William Linn, appointed Chaplain to Congress on the part of the House, May 1, 1789, Annals of Congress, 233.

committed to Congress by the Constitution.[3] Appellants' claim thus comes within the political question doctrine and for that reason it is beyond the scope of our review.

The majority assert that *Powell v. McCormack*, 395 U.S. 486 (1969), upholds their contention. In *Powell*, the House voted to exclude Representative Adam Clayton Powell from its membership. The House relied upon the authority allegedly vested in it by the Constitution, which provides "[e]ach House shall be the Judge of the . . . Qualifications of its own Members." Art. I, sec. 5. Powell contended that he was excluded for failure to comply with eligibility requirements that exceeded those prescribed by the Constitution and his exclusion was therefore beyond the authority conferred by the exclusion clause. The Supreme Court considered the political question defenses offered by the Government in support of its contention that the issue was nonjusticiable as being inextricably connected to a matter textually committed to Congress by the Constitution. Following a lengthy analysis, the Court decided that the constitutional provision prescribing eligibility requirements for members of the House were the exclusive requirements and that in expelling Powell for additional reasons the House had exceeded its textual mandate. The political question doctrine was therefore inapplicable.

The majority here maintains that since the provision that each House could judge the qualifications of its members, Art. 1, sec. 5, cl. 1, was held to be subject to judicial examination in *Powell* in the face of the political question doctrine, so too must be the clauses at issue herein. Maj. op. at 16. This conclusory reasoning bespeaks a fundamental failure to grasp the principles of political question analysis. As is clearly apparent from *Powell*, it is impossible to determine whether the political question

---

[3] For an *identical* analysis undertaken by Congress on the textual commitment of chaplains to the armed forces, see note 9 *infra*.

doctrine applies in a given instance without examining the merits of the underlying claim at issue. *See*, Jayson, *Annotated Const. of the United States* at 668 (U.S. Gov. Printing Office (1972)) ("[[a]s a result of *Powell*], . . . the political question consideration is now one on the merits rather than a decision not to decide.")[4] In other words, it is not possible to determine whether the compensation of legislative chaplains is protected from judicial review by the "textual commitment" criteria of the political question doctrine without examining the merits of the Government's claim that that compensation is textually committed.[5] As is demonstrated above, such examina-

---

[4] The majority seems at first to be in complete agreement with this conclusion, as it states,

> This court has observed that the general rule that "there is no warrant for the judiciary to interfere in the internal procedures of Congress" applies "where constitutional rights are not violated." Exxon Corp. v. FTC, 589 F.2d 582, 590 (D.C. Cir. 1978), *cert. denied*, 441 U.S. 943 (1979).

Maj. op. at 14 n.21. As this quote indicates, the merits of an alleged constitutional violation must be considered before the political question doctrine may be addressed.

Having supported the "merits first" type of analysis, however, the majority fails to go the next step, *viz.*, to consider the merits to the extent required. Indeed, it notes, "[w]e . . . do not reach the merits, and intimate no view as to whether the challenged expenditures violate the establishment clause . . ." Maj. op. at 1-2. This failure constitutes error that wholly deflates the majority's political question analysis.

[5] The majority asserts: "[T]he dissenting opinion concentrates on 'the merits of the underlying claim at issue,' on the novel theory that to decide whether a question is 'political' a court must first consider the case 'on the merits'. If the theory of the dissent is correct, then indeed there is no political question doctrine, there is only an obfuscating label pinned to a decision on the merits." Maj. op. at 12 n.17. This misstates the point made here. It is not that invocation of the political question doctrine may only allow a complete examination of the merits of the case as a whole. Rather, it is that the political question doctrine cannot be applied until there is a

tion shows that such compensation *is* textually committed. Thus, under the standard applied in *Powell*, judicial scrutiny of the compensation practice *is* protected by the political question doctrine.[6]

---

full examination of the Governments' claim that the compensation of legislative chaplains is textually committed. To proceed without resolving this underlying claim makes it *impossible* to gauge the application of the political question doctrine in any sensible fashion whatsoever.

[6] The majority asserts that the above discussion of the merits of the textual commitment claim is premature on the ground that "if . . . [the] . . . question is not political, the merits should be addressed initially by a court of first instance, not a court of review." Maj. op. at 12 n.

However, as the majority states, appellants are complaining of "expending and receiving funds under [designated] statutes that authorize payment of salaries and certain expenses for the chaplains of the Senate and House of Representatives" and that "appellants [are] . . . taxpayers," "that the challenged statutes are an exercise by Congress of the spending power under article I, section 8 . . .", and that the "total expenditure under these statutes is approximately $80,000 annually" are all "*undisputed*" facts. Maj. op. 2-3.

Thus, the facts necessary to a determination of the political question issue emerge from the Constitution, the decisions of the Supreme Court and the "undisputed" facts in the pleadings. There are no credibility issues and on such record this court is as capable as a trial court of deciding a constitutional issue. There is no necessity to treat the case like a yo-yo and not decide the issue that is before us when the essential facts are "undisputed." The Supreme Court speaking through Justice Harlan applied this wisdom in Commissioner v. Gordon, 391 U.S. 83, 95 n.8 (1967) ("[s]ince the record leaves no *disputed* issue of fact with respect to [the] question [to be decided herein on the merits], we find it proper to decide it here without reference to a trier of fact.") (emphasis added); King v. Commissioner of Internal Revenue, 458 F.2d 245, 249 (6th Cir. 1972) also dealt with an alternative issue that was not reached by the trier of facts and Judge Peck's opinion held "a remand is unnecessary if all the evidence is documentary and the appellate court can pass upon the facts as

The correctness of this conclusion clearly appears when the textual commitment is examined from another angle. The ability of the houses of Congress to appoint chaplains, whose sole public duty throughout history has been to give daily invocations, is implicitly authorized by the officer selection and rules proceedings clauses cited above. What the Senate has done in having a chaplain amounts to nothing more than a *recognition* of God and religion that is similar to their recognition elsewhere in the Constitution. Article II, section 1 recognizes God and religion by providing that the President of the United States may assure the nation that he will carry out his great duty and obligation to uphold the Constitution of the United States by taking an "*oath*" to do so. An "Oath" is a "formal calling upon God or a god to witness to the truth of what one says or to witness that one sincerely intends to do what one says." *Webster's New Collegiate Dictionary* (*1976*).[7] Thus, the Constitution explicitly

---

well as the trial court, or if all the facts relied upon to support the judgment are in the record and are undisputed. . ."; *see also* Texas Co. v. R. O'Brien Co., 242 F.2d 523, 529 (1st Cir. 1972) ("if all subsidiary facts . . . stand admitted, there can be no need of sending the case back"); McComb v. Utica Knitting Co., 164 F.2d 670, 674 (2d Cir. 1947) ("as . . . the evidence is entirely documentary, no issue of witness credibility arises; therefore, we can pass on the facts as well as the trial judge [citing cases] and need not remand for a finding by him."); Aetna Life Ins. Co. v. Meyn, 134 F.2d 246, 249 (8th Cir. 1943) (where "controlling facts are not in dispute" and "questions of law" were dispositive, the Court of Appeals was "at liberty to decide the case on its merits" even though trial court had not made findings of fact.)

[7] This meaning of an oath has been applied repeatedly. *See, e.g.*, Lackey v. Mesa Petroleum, 559 P.2d 1192, 1193 (N.M. Ct. App. 1976) (an appeal by a person to God); In re Rice, 181 N.E. 2d 742 (Ill. Ct. App. 1962) (a solemn appeal to God); In re Heath, 19 P. 926, 927 (Kansas S. Ct. 1888) (a declaration or promise made by calling on God to witness what is said); State v. Jones, 154 P. 378 (Idaho S. Ct. 1916) (solemn appeal to the Supreme Being).

recognizes God and religion by a textual commitment whereby the President is given the option of invoking God in his binding undertaking to carry on his most solemn governmental duty, i.e., to support the Constitution. That the President's undertaking may also be by "affirmation" implements the "free exercise of religion" also guaranteed by the First Amendment.

Nor is this the only constitutional provision recognizing God and religion. The Constitution also provides.

> The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by *oath* or affirmation, to support this Constitution, but no religious test shall ever be required as a qualification to any office or public trust under the United States . . .

U.S. Const. art VI. (emphasis added). The recognition of God and religion in this provision is of tremendous magnitude, extending as it does to every major governmental office in the nation—state and federal.[8]

---

[8] In addition, in their inaugural addresses, *all* of our nation's presidents have publicly recognized God and religion. For example, George Washington, who led the colonists to independence, presided throughout the constitutional convention and was elected the first president of the new nation under the Constitution, paid homage to the place of God and religion in the lifeblood of the nation in his First Inaugural Address on April 30, 1789:

> [I]t would be particularly improper to omit in this first official Act, my fervent supplications to that Almighty Being who rules over the Universe, who presides in the Councils of Nations, and whose providential aids can supply every human defect, that his benediction may consecrate to the liberties and happiness of the People of the United States, a Government instituted by themselves for these essential purposes: and may enable every instrument employed in its administration to execute with success, the functions allotted to his charge. In tendering

In addition Article I, section 3 of the Constitution provides that the Senate shall have the sole power to try all impeachments and "when sitting for that purpose, they shall be on *oath* or affirmation."

> this homage to the Great Author of every public and private good, I assure myself that it expresses your sentiments not less than my own; nor those of my fellow-citizens at large, less than either. No People can be bound to acknowledge and adore the invisible hand, which conducts the Affairs of men more than the People of the United States. Every step, by which they have advanced to the character of an independent nation, seems to have been distinguished by some token of providential agency. And in the important revolution just accomplished in the system of their United Government, the tranquil deliberations and voluntary consent of so many distinct communities, from which the event has resulted, cannot be compared with the means by which most Governments have been established, without some return of pious gratitude along with a humble anticipation of the future blessings which the past seems to presage. These reflections, arising out of the present crisis, have forced themselves too strongly on my mind to be suppressed. You will join with me I trust in thinking that there are none under the influence of which the proceedings of a new and free Government can more auspiciously commence.

J. Fitzpatrick, 30 Writings of Washington, 292-293 U.S. Gov't. Printing Office, Bicentennial Commission.

George Washington also laid the cornerstone of the Capitol in a Masonic Ceremony in which "the whole congregation joined in awfull [*] prayer." The Columbian Mirror and Alexandria Gazette, September 25, 1973. *"Awfully . . . archaric: with a feeling of awe . . ." Webster's Third New International Dictionary (1961).

The principal sponsor of the Bill of Rights, Thomas Jefferson, also invoked divine guidance on March 4, 1805 in his inaugural address.

> . . . I shall need, too, the favor of that Being in whose hands we are, who led our fathers, as Israel of old, from their native land and planted them in a country flowing with all the necessaries and comforts of life; who has covered our infancy with His providence and our riper

The Constitution thus by very specific textual references recognizes the existence of God, and hence religion, by requiring that all state and federal officers of the United States may be bound by "oath" to support the Constitution. Observation through the years supports a conclusion that 99% of those who assume such responsibilities do so by taking an oath and not by affirmation. Religion to this extent is thus textually woven into the very core of all government in the United States at the highest levels, *i.e.*, the major governmental officials. And this requirement has been applied to every major governmental official in the United States for the past 193 years.

The taking of an oath, and the recognition of religion that it manifests, can hardly be construed as "*establishing* religion." Similarly, the offering of an invocation prior to sessions in Congress does not amount to the *establishment* of religion worthy of First Amendment attack. Though no Supreme Court case has passed definitively on this latter point, there have been at least four cases in which Justices have *strongly* implied a concurrence in such a conclusion (and *no* cases implying otherwise). In *Abington School District v. Schempp*, 374 U.S 203 (1962), Justice Brennan wrote in his concurrence:

> years with His wisdom and power, and to whose goodness I ask you to join in supplications with me that He will so enlighten the minds of your servants, guide their councils, and prosper their measures that whatsoever they do shall result in your good, and shall secure to you the peace, friendship, and approbation of all nations.

Engel v. Vitale, 370 U.S. 421, 447 n.3 (1961) (Stewart, J., dissenting).

For additional examples of the invocation of God and religion by Presidents, see the extracts from the inaugural addresses of John Adams, James Madison, Abraham Lincoln, Grover Cleveland, Woodrow Wilson, Franklin Delano Roosevelt, Dwight Eisenhower, and John Kennedy, in *Vitale*, *supra*, 370 U.S. at 447-449 n.3.

> The saying of invocational prayers in legislative chambers, state or federal, and the appointment of legislative chaplains, might well represent no involvements of the kind prohibited by the Establishment Clause. Legislators, federal and state, are mature adults who may presumably absent themselves from such public and ceremonial exercises without incurring any penalty, direct or indirect.

374 U.S. at 299-300 (Brennan, J., concurring). Earlier in *Zorach v. Clauson*, 343 U.S. 306 (1952), Justice Douglas had gone one step further by noting:

> The First Amendment, however, does not say that in every and all respects there shall be a separation of Church and State. Rather, it studiously defines the manner, the specific ways in which there shall be no concert or union or dependency one on the other. *That is the common sense of the matter.* Otherwise the state and religion would be aliens to each other—hostile, suspicious and even unfriendly. Churches could not be required to pay even property taxes. Municipalities would not be permitted to render police or fire protection to religious groups. Policemen who helped parishioners into their places of worship would violate the Constitution. *Prayers in our legislative halls*; the appeals to the Almighty in the messages of the Chief Executive; the proclamations making Thanksgiving Day a holiday; "so help me God" in our courtroom oaths—these and all other references to the Almighty that run through our laws, our public rituals, our ceremonies would be flouting the First Amendment. A fastidious atheist or agnostic could even object to the supplication with which the Court opens each session: "God save the United States and this Honorable Court."

343 U.S. at 312-13 (Douglas, J.) (emphasis added). Similarly, Justice Stewart noted in *Engel v. Vitale*, 370 U.S. 421 (1961):

> At the opening of each day's Session of this Court we stand, while one of our officials invokes [illegible]

Best Copy Available

> of God. Since the days of John Marshall our Crier has said, "God save the United States and this Honorable Court." *Both the Senate and the House of Representatives open their daily Sessions with prayer.* Each of our Presidents, from George Washington to John F. Kennedy, has upon assuming his Office asked the protection and help of God.
>
> . . .
>
> I do not believe that this Court, or the Congress, or the President has by the actions and practices I have mentioned established an "official religion" in violation of the Constitution.

370 U.S. at 446-50 (Stewart, J., dissenting) (emphasis added). Finally, Justice Reed noted in *McCollum v. Board of Education*, 333 U.S. 203 (1947) concerning the Establishment Clause:

> The practices of the federal government offer many examples of this kind of "aid" by the state to religion. *The Congress of the United States has a chaplain for each House who daily invokes divine blessings and guidance for the proceedings.* The armed forces have commissioned chaplains from early days. They conduct the public services in accordance with the liturgical requirements of their respective faiths, ashore and afloat, employing for the purpose property belonging to the United States and dedicated to the services of religion. Under the Servicemen's Readjustment Act of 1944, eligible veterans may receive training at government expense for the ministry in denominational schools. The schools of the District of Columbia have opening exercises which "include a reading from the Bible without note or comment, and the Lord's prayer."
>
> . . . [T]he history of past practices is determinative of the meaning of [the Establishment] clause . . .

333 U.S. at 253-56 (Reed, J., dissenting) (emphasis added). *See also, Florey v. Sioux Falls School District 49-61*, F.2d 1311, 1329 (8th Cir. 1980) (McMillan, J.,

dissenting) ("Of course, 'every vestige, however slight, of cooperation or accommodation between religion and government' is *not* unconstitutional. . . . For example . . . legislatures are served by chaplains.").

That opening legislative sessions with invocations does not violate the Establishment Clause is also borne out by the fact that the Congress, whose first act in organizing included providing for a chaplain and electing one, was the *same* Congress that passed the First Amendment. 1 *Journal of the Senate* 16, 1 *Journal of the House of Representatives* 26. It can thus hardly be presumed that Congress considered that the Establishment Clause it included in the First Amendment would prohibit Congress from having chaplains, since the election of a chaplain had been their first order of business after organization.[9]

Nor was this the only indication that Congress viewed the appointment and compensation of legislative chaplains to be constitutional. In the mid-nineteenth century, Congress undertook an extensive consideration of the constitutionality of those practices and found them absolutely consistent with the provisions of the Establishment Clause. In a passage leaving *no* room for misinterpretation on this point, the Senate noted, for example:

> If Congress has passed, or should pass, any law which, fairly construed, has in any degree introduced, or should attempt to introduce, in favor of any church, or ecclesiastical association, or system of religious faith, all or any one of these obnoxious particulars—endowment at the public expense, peculiar privileges to its members, or disadvantages or penalties upon those who should reject its doctrines or belong to other communions—such law would be a "law respecting an establishment of religion," and, therefore, in violation of the Constitution. But no law yet passed by Congress is justly liable to such an objection.

---

[9] For the view of a later Senate on this very matter, see note 8 *infra*.

> Take, as an example, the chaplains to Congress. At every session two chaplains are elected—one by each house—whose duty is to offer prayers daily in the two houses and to conduct religious services weekly in the hall of the House of Representatives. Now, in this, no religion, no form of faith, no denomination of religious professors, is established, in preference to any other, or has any peculiar privileges conferred upon it. The range of selection is absolutely free in each house amongst all existing professions of religious faith. There is no compulsion exercised or attempted, upon any member or officer of either house, to attend their prayers or religious solemnities. No member gains any advantage over another by attending, or incurs any penalty or loses any advantages by declining to attend. The chaplain is an officer of the house which chooses him, and nothing more. He owes his place not to his belonging to a particular religious society, or holding a particular faith, but to the voluntary choice of the members of the house, and stands, in this respect, upon the same footing with any other officer so elected. It is not seen, therefore, how the institution of chaplains is justly obnoxious to the reproach of invading religious liberty in the widest sense of that term.

S. Rep. No. 376, 32d Cong., 2d Sess. (1853).[10] *See also* H.R. Rep. No. 171, 31st Cong., 1st Sess. (1850); and H.R. Rep. No. 124, 33d Cong., 1st Sess. (1854).

---

[10] The Senate also laid any doubts to rest as to what *it* thought could be gleaned from the fact that the Congress that adopted the First Amendment had paid legislative chaplains.

> The whole view of the petitioners seems founded upon mistaken conceptions of the meaning of the Constitution. This is evidence—if not from what we have said, from this consideration—that, from the beginning, our government has had chaplains in its employment. If this had been a violation of the Constitution—an establishment of religion—why was not its character seen by the great and good men who were coeval with the government—were in Congress and in the Presidency when this con-

The congressional findings on these constitutional questions should be given great weight by this court. "The

---

stitutional amendment was adopted? They were wise to discover the true character of the measure; they, if any one did, understood the true purport of the amendment, and were bound, by their duty and their oaths, to resist the introduction or continuance of chaplains, if the views of the petitioners were correct. But they did no such thing; and therefore we have the strongest reason to suppose the notion of the petitioners to be unfounded. Unfounded it no doubt is. Our fathers were true lovers of liberty, and utterly opposed to any constraint upon the rights of conscience. They intended, by this amendment, to prohibit "an establishment of religion" such as the English church presented, or anything like it. But they had no fear or jealously of religion itself, nor did they wish to see us an irreligious people; they did not intend to prohibit a just expression of religious devotion by the legislators of the nation, even in their public character as legislators; they did not intend to send our armies and navies forth to do battle for their country without any national recognition of that God on whom success or failure depends; they did not intend to spread over all the public authorities and the whole public action of the nation the dead and revolting spectacle of atheistical apathy. Not so had the battles of the revolution been fought, and the deliberations of the revolutionary Congress conducted. On the contrary, all had been done with a continual appeal to the Supreme Ruler of the world, and an habitual reliance upon His protection of the righteous cause which they commended to His care.

What has thus been done, with modifications, indeed, to suit external circumstances and particular exigencies, but in substance always the same from the beginning of our existence as a nation; what met the approval of our Washington, and of all the great men who have succeeded him; what commands the general commendation of the people; what is at once so venerable and so lovely, so respectable and respected—ought not, in the opinion of the committee, now to be discontinued.

The committee, therefore, pray to be discharged from the further consideration of the petitions.

Id.

customary deference accorded the judgments of Congress is certainly appropriate when, as here, Congress specifically considered the question of the Act's constitutionality." *Rostker v. Goldbery*, —— U.S. ——, 101 S. Ct. 2646 (1981).

Further indication that the invocations given at the beginning of each legislative session are not in violation of the Establishment Clause exists in the long standing practices of having compensated chaplains in the armed forces and in prisons. To date, no case has invalidated either of these later types of chaplaincies on Establishment Clause grounds. Indeed, the appointment and compensation of at least the prison chaplains have been upheld in the face of First Amendment attack.[11] *See, e.g., Abington School District v. Schempp, supra*, 374 U.S. at 299 (Brennan, J., concurring); *Theriault v. Silker*, 547 F.2d 1279 (5th Cir. 1977); *Protestants and Other Americans United for Separation of Church and State v. O'Brien*, 272 F. Supp. 712, 721 (D.C. Cir. 1967). *See also Florey v. Sioux Falls School District 49-5, supra*, 619 F.2d at 1329 n.6 (McMillan, J., dissenting).

It is thus my conclusion that the textually committed right to recognize religion implicit in the authorization to

---

[11] While the courts have not specifically examined the constitutionality of the appointment and compensation of chaplains in the armed forces, Congress itself has considered the issue in its entirety and found *no* Establishment Clause violation of any kind. Employing an "implied federal power" analysis such as that used above in my argument on the textual commitment of legislative chaplains to Congress, the House of Representatives noted:

> We presume all will grant that it is proper to appoint physicians and surgeons in the army and navy. The power to appoint chaplains is just the same, because neither are expressly named, but are appointed under the general authority to organize the army and navy, and we deem the one as truly a matter of necessity as the other.

H.R. Rep. No. 124, 33d Cong., 1st Sess. (1854).

Congress to choose its officers and to formulate the rules of its proceedings, a right consistent with the recognition of religious rights elsewhere in the Constitution, does *not* constitute an "establishment of religion" in contravention of the First Amendment. Any contention that the appointment or payment of congressional chaplains violates the Establishment Clause must accordingly fail.

In sum, the practice of appointing *and* compensating legislative chaplains is textually committed to Congress by the Constitution in a manner that indicates it is not in conflict with the Establishment Clause of the First Amendment. It is therefore entirely protected from our review by the political question doctrine.

B. Lack of Respect Due a Coordinate Branch

The implementation of constitutional authorization to the houses of Congress to appoint and compensate their respective chaplains is clearly a matter of internal administration to be dealt with solely by the members of the respective houses of Congress. Only if these two practices are in violation of another part of the Constitution could this internal matter be evaluated by a party outside of Congress, viz., by the courts. As has been demonstrated, the appointment and compensation at issue do not contravene any other provision in the Constitution. Accordingly, the power of Congress here is "absolute and beyond the challenge of any other body or tribunal." *United States v. Ballin*, 144 U.S. 1, 5 (1892); *McGrain v. Daugherty*, 273 U.S 135, 181-82 (1927).

For this court to scrutinize the appointment and compensation of the chaplain of the House and Senate would be a patent interference with the internal affairs of a coordinate branch of government. Insofar as such action would fly into the face of Congress and its specified powers it would demonstrate that "lack of respect" which is prohibited to courts by the political question doctrine as

articulated in *Baker v. Carr*, *supra*.[12] This provides an additional reason for this court to dismiss appellants' Establishment Clause attack as being nonjusticiable.

II. Standing

The panel's disposition of the standing issue also runs counter to my interpretation of the Constitution and the relevant Supreme Court decisions. In my opinion, the majority misapplies the double nexus test in *Flast v. Cohen*, 392 U.S. 83 (1968), and improperly rules that standing exists even though this case involves nothing more than the incidental expenditure of funds appropriated for the administration of what are essentially recognized as regulatory provisions in the Constitution.

A. The *Flast* Test

In evaluating whether a taxpayer invoking the Establishment Clause had standing to attack the expenditure of Federal funds for direct aid to sectarian schools, the Supreme Court in *Flast* [13] formulated its so-called "double nexus" test:

---

[12] As the District Court so aptly noted on this point,

> [I]n the circumstances here, the conclusion seems inescapable that it would be "impossible" for this Court, consistently with the respect which courts owe to coordinate branches of government and to each other, to undertake an "independent resolution" of the question of Congress' power to compensate its Chaplains, on this complaint of these particular taxpayers.

Murray v. Morton, 505 F. Supp. 144, 147 (D.D.C. 1981).

[13] A suit filed by a citizen seeking to enjoin salary payment to legislative chaplains was dismissed for lack of standing by this Court in Elliott v. White, 23 F.2d 997 (D.C. Cir. 1928). That decision, however, relied on the then-seminal Supreme Court decision in Frothingham v. Mellon, 262 U.S. 447 (1923), which precluded a taxpayer's use of a federal court as a forum

> First, the taxpayer must establish a logical link between that status [taxpayer] and the type of legislative enactment attacked. Thus, a taxpayer will be a proper party to allege the unconstitutionality only of exercises of congressional power under the taxing and spending clause of Art. I, § 8, of the Constitution. . . . Secondly, the taxpayer must establish a nexus between that status and the precise nature of the constitutional infringement alleged. Under this requirement, the taxpayer must show that the challenged enactment exceeds specific constitutional limitations imposed upon the exercise of the congressional taxing and spending power and not simply that the enactment is generally beyond the powers delegated to Congress by Art. I, § 8.

392 U.S. at 102-03. The taxpayer in *Flast* was held to have satisfied both criteria:

> [Appellants'] constitutional challenge is made to an exercise by Congress of its power under Art. I, § 8, to spend for the general welfare, and the challenged program involves a substantial expenditure of federal tax funds. In addition, appellants have alleged that the challenged expenditures violate the Establishment and Free Exercise Clauses of the First Amendment.

Id. at 103 (footnote omitted).

The majority asserts that appellants here have likewise satisfied both criteria:

> The precise factors the Court found sufficient in *Flast* to confer standing are present here: appellants challenge an exercise of the congressional spending power,

---

to air his generalized grievances about the conduct of government or the allocation of power in the Federal System.

Since *Frothingham*, the Supreme Court has modified this strict ban to taxpayer standing in *Flast* (see text below). Any inquiry into the continued viability of *Elliott* in the instant case, therefore, must begin with an analysis of appellants' claims in light of *Flast*.

> and they allege that the power has been exercised in a manner inconsonant with the establishment clause. The double nexus test of *Flast* requires no more.

Maj. op. at 5.

This analysis misapplies *Flast* and is faulty. The taxing and spending provisions of Article I, section 8 of the Constitution give Congress the power to levy taxes to provide for the general welfare.[14] The instant case has nothing to do with *the general welfare*. It only concerns a small fraction of a congressional appropriation for the *purely internal operations* of each house. That appropriation is necessary and proper because the Constitution created Congress and it needs money to sustain its existence and to perform the functions the Constitution requires. Its authority to appropriate for chaplains comes, as demonstrated above, specifically from the officer selection and rules proceedings clauses of Article I, and the "necessary and proper" clause, *not* from the taxing and spending powers enumerated in article I, sec. 8, cl. 1. In challenging the incorrect congressional power, appellants have failed to bring the case within the double nexus test applied in *Flast*.[15]

---

[14] Art. I, sec. 8 provides:

> The Congress shall have Power To lay and collect Taxes Duties, Imposts and Excises, to pay the Debts and provide for the Common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

[15] The majority looks for support in their standing analysis to Valley Forge Christian College v. Americans United for Separation of Church & State, Inc., 50 U.S.L.W. 4103 (U.S. Jan. 12, 1982). In particular, the majority notes that *Valley Forge* affirms a taxpayer's right to challenge alleged abuses of Congress' "taxing and spending" power as set out in Article I, section 8 of the Constitution. Maj. op. at 5-6.

This analysis is clearly irrelevant to the instant case. As demonstrated, those attacking "taxing and spending" abuses of Congress have standing *only* where Congress is spending *for the general welfare*. Since it is *not* doing so here, appellants' claims must be dismissed.

B. The "Incidental Expenditure" Test

As noted in *Flast*, a taxpayer does not have standing to challenge an incidental expenditure of tax funds in the administration of an essentially regulatory statute or provision. "This requirement is consistent with the limitation imposed upon state-taxpayer standing in federal courts in *Doremus v. Board of Education*, 342 U.S. 429 (1952)." *Flast, supra*, 392 U.S. at 102. This Circuit adopted this analysis in *post-Flast* examinations of taxpayer standing. *See, e.g., Public Citizen, Inc. v. Simon*, 539 F.2d 211, 218 (D.C. Cir. 1976). In *Simon*, taxpayers sued the Secretary of the Treasury to recover all salaries paid to persons on the White House staff while they were allegedly devoting substantially all of their working time to a presidential re-election campaign. In assessing whether or not the taxpayers had standing, Judge Leventhal undertook a careful analysis of *Flast* and its progeny. Specifically, he gave close attention to *United States v. Richardson*, 418 U.S. 166 (1974), and *Schlesinger v. Reservists Committee to Stop the War*, 418 U.S. 208 (1974). These cases, he determined, emphasized the "incidental expenditure" analysis in *Flast* by noting that challenges to the expenditure of public funds in the administration of regulatory statutes providing operating funds for specific offices were " 'generalized grievances' not entitled to invocation of judicial power because of the absence of 'any particular concrete injury.' " 539 F.2d at 215. The challenge in *Simon* was accordingly dismissed for lack of standing because

> appellants' challenge can be characterized as regulatory in aim—to compel an accounting by White House officials of the time spent on campaigning as opposed to official duties—and the "executive spending" on the salaries of the White House staff members merely an incidental feature.

539 F.2d at 217.

In the instant case, the sums appropriated for compensating the legislative chaplains are incidental to the practice authorized by the regulatory clauses of the Constitution at issue herein wherein each house may choose its own officers and *regulate its own proceedings*. It thus comes within the purview of the "incidental expenditure" exception to taxpayer standing articulated in *Flast*, *Richardson*, *Schlesinger*, and *Simon*.[16] Lack of standing is thus an additional ground for dismissing appellant's complaint.

CONCLUSION

The majority has either misconstrued or misapplied the political question and standing doctrines as applied to this case. As demonstrated above, appellants' claim should be dismissed on *both* grounds. It has also been suggested:

> If there be a God who hears prayer—as we believe there is—we submit, that there never was a deliberative body that so eminently needed the fervent prayers of righteous men as the Congress of the United States. There never was another representative assembly that had so many and so widely different interests to protect and to harmonize, and so many local passions to subdue. One member feels charged to defend the rights of the Atlantic, another of the Pacific coast; one urges the claims of constituents on the borders of the torrid, another on the borders of the frigid zone; while hundreds have the defence of local and varied interests stretching across an entire continent. If personal selfishness or ambition, if party or sectional views alone, bear rule, all attempts at legislation will be fruitless, or bear only bitter fruit. If wisdom from above, that is profitable

---

[16] Moreover, appellants' claim may be readily seen as a "general grievance" of the type specifically barred for lack of standing in *all* cases on taxpayer standing (including *Flast*) since *Frothingham*. *Frothingham*, that is, continues to control in the instant case, as does *Elliott*, which relied on the *Frothingham* analysis.

> to direct, be given in answer to the prayers of the pious, then Congress need those devotions, as they surely need to have their views of personal importance daily chastened by the reflection that they are under the government of a Supreme Power, that rules not for one locality or one time, but governs a world by general laws, subjecting all motives and acts to an omniscient scrutiny, and holds all agents to their just awards by an irresistible power.

H. Rep. No. 124, 33d Congress, 1st Sess., March 27, 1854, 6-7. These same considerations exist today in greatly magnified form.

For all of the above reasons I therefore respectfully dissent.

97th CONGRESS
2D SESSION

H. RES. 413

Relating to the Chaplain of
the House of Representatives

IN THE HOUSE OF REPRESENTATIVES

MARCH 30, 1982

Mr. FOLEY submitted the following resolution; which was considered and agreed to

---

RESOLUTION

Relating to the Chaplain of
the House of Representatives

Whereas, the Constitution of the United States provides that each House shall select its officers (Article I, section 2, clause 5) and shall determine the rules of its proceedings (Article I, section 5, clause 2); and

Whereas, Rules II and VII of the House of Representatives, enacted pursuant to that constitutional authority, provide for the

election of a chaplain and provide that the Chaplain shall open the sessions of the House with prayer; and

Whereas, the Constitution provides that the House shall publish its proceedings, except such parts as may in its judgment require secrecy (Article I, section 5, clause 3); and

Whereas, pursuant to that authority, the prayers offered by the Chaplain at the sessions of the House are printed in the Congressional Record; and

Whereas, the speech or debate clause of the Constitution (Article I, section 6, clause 1) provides that Members of the House shall not be questioned in any other place for actions said or done in the legislative sphere; and

Whereas, there is pending in the United States Court of Appeals for the District of Columbia Circuit a suit (Jon Garth Murray et al. v. Angela Marie Buchanan, et al., Appeal No. 81-1301), alleging

that the exercise by the House of the aforesaid provisions of the Constitution and House Rules contravene the Establishment Clause of the First Amendment to the Constitution; and

Whereas, the Speaker and Chaplain are named in the complaint as defendants; and

Whereas, on March 9, 1982, a panel of the court of appeals issued a judgment in favor of the appellants in the above-referenced case in which the court determined that neither the Constitutional provisions explicitly conferring authority on the House to select its officers, makes its rules or publish its proceedings, nor the proper exercise by the House of the power conferred thereby through its rules preclude judicial determination of the claims alleged by the plaintiffs in the suit that congressional chaplaincies contravene the Constitution; and

Whereas, the decision of the court of appeals raises the most serious concerns

for the doctrine of separation of powers provided in the Constitution by the aforesaid provisions and for the ancient and historic rights and privileges of the House with respect to the control of its internal affairs; and

Whereas, the decision of the court of appeals implies a lack of respect due a coordinate branch concerning matters committed to it by the Constitution: Therefore, be it

RESOLVED, That the House of Representatives considers its historic establishment of a chaplaincy to be an appropriate and constitutional exercise of exclusively conferred powers; and be it further

RESOLVED, That the House views with deep concern the decision of the panel of the United States Court of Appeals for the District of Columbia Circuit in the case of Jon Garth Murray et al. v. Angela Marie Buchanan et al. because of

its impact on the constitutional doctrine of separation of powers and on the constitutional power of the House to determine the rules of its proceedings, to select officers, and otherwise to control its internal affairs; and be it further

RESOLVED, That counsel representing the Speaker and the Chaplain of the House of Representatives in these proceedings be authorized and directed to urge these concerns on the said court in petitioning for a hearing en banc before the full Court of Appeals, in moving for a dismissal of the suit and in any other proceedings relating to this matter; and be it further

RESOLVED, That the Clerk of the House shall forthwith transmit a certified copy of this resolution to the said court.

SUPREME COURT FAVORABLE GUIDES ON CHURCH-STATE

A brief summary reaffirming with clarity the Abington guides on founding principles, Bible, prayers, Christian ethics in curriculum and government--the total Supreme Court Establishment Christian Neutrality Clause follows:

1. Christian nation, Christian administration. Engel (p. 8), stemming from Holy Trinity.

2. Secularism is unconstitutional, as secular passivity. Abington (pp. 28, 71).

3. Facilities of government cannot commit inhibition, handicap, hostilities, offense, oppression, prohibition, jeopardy to Christian ethics which guide law and jurisprudence. Abington, (pp. 32, 42, 55, 66, 72, 73, 74)

4. Parent's undebatable rights. Abington, (pp. 37, 38, 41, 50.)

5. Prayers for discipline, harmony, unity, promotion of authority, Abington, 56, 57. Prayers for patriotic and ceremonial exercises, Engel (p. 8 ftn). (Non-sectarian Christian holidays permitted, as pageants and carols.)

6. Bible for moral inspirations and for ethics in curriculum (pp. 20, 27, 52, 55, 67).

7. Superintendent's authority (Executive and administrative authority--unlegislated prayers) was not usurped. Abington, (56, 57.)

8. Legislated prayers are permitted where a compelling national interest is demonstrated. Abington (pp. 32, 49, 57, 64.)

9. Temporary use of public buildings for religious activity is permitted. Abington (p. 66).

10. Student-initiated religious activity is permitted in public buildings. Abington (pp. _____).

11. Prayers and orderly religion (not cults) are permitted for Congress and the military. Abington (pp. 66, 67)

Christian Ethics and Christian Holidays must be included, because of nationwide attacks.

SOME EXAMPLES OF THE ANTI-CHRISTIAN MOVEMENT INVADING ALL INSTITUTIONS

I. The American Atheist Magazine printed for nationwide monthly circulation by the plaintiffs in the Murray case includes hostile statements as follows:

On evolution, the American Atheists stated:

> "The conflict between a student's religious background and twentieth century thought creates much mental anguish and often accounts for his 'inability to understand' many of his courses."
>
> "Without Adam's fall into a life of constant sin terminated by death, what purpose is there to Christianity? None."

Other American Atheists printings are:

> ". . . documented evidence showing that the Roman Catholic Church in its most important work--fostering morality among its adherents--is a resounding failure."
>
> "I have very little sympathy for the convict Christ supposedly executed 2,000 years ago for the crime of sedition."

> "There is no doubt in my mind that school children, two hundred years from now will look back at us, wondering how their forefathers could have been so ignorant as to believe all the absurd stories propagated by the Christian Church--a church which has truly mastered the art of hypocrisy."
>
> (Relating to a Christian effecting in actions his belief)--
> "This (Christianity) is a terrible sickness.
>
> ". . . freedom from religion, American Atheists, Inc., is a non-political, non-profit, tax-exempt organization dedicated to the complete separation of church and state . . ."

"Separation of church and state," is the alien enemy doctrine of the Soviet Constitution, Art. 52. It is Item 28, Current Communist Goals:

> "Eliminate prayer or any phase of religious expression in schools on the ground that it violates . . . "separation of church and state."

Item 29 states:

> "Discredit the American Constitution by calling it inadequate, old-fashioned, out-of-step with modern needs, a hindrance to cooperation between nations on worldwide basis."

Title 36, U. S. C. 172, One Nation Under God, provides in the legislative history that the purpose of this law is to secure our "babes from the invading rabid communism."

In 1979, Congressman Larry MacDonald prepared a Petition to the President, listing the attacks against Christian faith:

> ". . . infringing upon the conscience and religious rights: seeking control over the most intimate affairs of the ministry of all churches through intrusion into the business affairs of such organizations;
>
> "Using taxing power to limit or ultimately terminate important activities of churches . . .
>
> "A bridging freedom of speech of church leaders who attempt to criticize actions or decisions of government leaders . . .
>
> "Compelling churches to disregard the religious competence and character of those they employ in their ministry, requiring them to conform to race, color, and sex.
>
> "Attacking the sanctity of the family by legislating programs which increasingly encroach on the God-given right of parents to determine the best for their children . . .

> "Striving to completely eliminate from public schools the religious principles on which the nation was founded by restricting the celebration of religious holidays, the reciting of prayers, reading from the Bible."

Many nationwide outcries for judicial protection of the fundamental rights have been ignored by the courts, a serious violation of the First Amendment Christian Neutrality Clause.

Quoting from a letter from TRUTH IN PRESS, Washington, D.C., November 19, 1981, to Senator Daniel Patrick Moynihan, Washington, D.C.:

"In the Congressional Record, March 3, 1981, you praised the achievements of Title I programs:

"'I think we can say without fear of contradiction that one of the most effective programs in the field of education that we have adopted in equipping the young children in this country with the basic fundamentals of education in reading and writing and basic skills, has been the Title I education program...Title I, a landmark program, has produced enormously successful results, which have not been questioned by anyone.'

"Many nationwide, official and private reports including General Accounting Office (GAO) Reports, National Institute of Education Reports, and Rand Corporation Reports, and further, including a report from Senator ZORINSKY, DO CONTRADICT AND QUESTION your statement, and indicate that there is no valid evaluation of the program. Further, statistics discredit your statement that youth has been given basic fundamentals. To the contrary, youth has been denied these opportunities by what has been registered in statistics as a 'creaming off of the

intelligence, skills, and morality of the nation.' Nationwide outcries from parents have reported for years the illiteracy and amorality coerced upon their youth, but Congress has ignored these reports, as you have.

"One of the many examples is the GAO Report on the Department of Education (ED), HRD 80-65, September 15, 1981, which reasserted earlier deficiencies. The report stated:

"'Reports on ED reviews in the States we visited seldom indicated procedures had been reviewed and some of the reports we received and recommendations for correcting inadequate or improper evaluation procedures, were technically unsound in many districts.' [Emphasis added]

"Certainly, you investigated nationwide rumors that the letters to Congress, praising Title I programs from school personnel and parents, were nothing more than a synchronized action initiated by none other than the National Education Association (NEA), to provide continuation, by untrue justification, for questionable education officially reported to the GAO and others as supporting alien enemy doctrines which identify with the Soviet Constitution!

"The reports by GAO and others show clearly how students under Title I fall behind after being removed from Title I programs. Many other deficiencies are presented reflecting inability to evaluate the programs, which are reported both ineffective and dangerous by parents and others. Some programs have been reported by GAO as not only questionable, but self-contradicting, and deficient in varied ways. There is no justification, therefore, to continue the what amounts to be the promotion of the

Soviet Constitution. It appears that the students under Title I programs are specifically being prepared for the sole purpose of responding with improvements only for specific examinations used for the purpose of justifying the continuation of the questionable program. Such studies do not provide lasting benefit to students and fail to meet the intended goals of "reading, writing, and arithmetic," as national test scores have proven.

". . . Senator Zorinsky alerted Senator Pell, March 3, 1978, about the offensive moral attacks in Federal Aid to Education, listing specific violations to Christian Ethics, U S Constitution. Neither Senator Pell nor you responded with any corrections on these Constitutional, ethical violations!

"Mayor Koch, formerly Congressman Koch, declared in public that the Great Society programs, of which Federal Aid to Education is one, were: 'MUCH CRAP--I was dumb--We all were dumb--I voted for so much crap! Who knew? We got carried away with what the sociologists were telling us--We had a small number of people whom we permitted to dominate society. This was their view--it never was the view of the majority.' [Emphasis added]

". . . According to many reports, including Standard Aptitude Tests (SAT) scores which are falling drastically year after year, the total failure of Federal Aid to Education is proven to be outright subversion which aids no one. Like Daniel J. Flood's letter to the GAO Report--HRD 77-49, April 15, 1977, similar reports make it clear that Federal Aid to Education, Title I, and other innovative programs are subversive. Flood said: '. . . books are subversive, irreligious, immoral, racist, sexist, and just plain filthy.' Congressman Quie

reported in the same report that the 'federal government is funding activities aimed at modifying the behavior of school children.' Such actions, of course, violate Constitutional parental sovereignty, religious freedom, civil and human rights! Though you and others have been repeatedly informed, you have done nothing to fulfill your OATH to 'defend the U S Constitution.' To the contrary, you have supported continuation of what the reports on Federal Aid to Education reveal as 'REDISTRIBUTION OF WEALTH AND OPPORTUNITY.' These unConstitutional programs further the goals of the Soviet Constitution, Annex A, Art. 25, 52, 169, 'propagate worldwide atheism, separation of church and state, communistic morality, classless society, centralized education, workers of the world, unite!'

"The holocaust of Christian youth of European background has to be stopped, and your defense of this cause must address constitutional and other legal liabilities. Therefore, you are urged to correct the violations of Federal Aid to Education, Title I, and all other innovative studies which disservice taxpayers, parents, and students; and which further undermine the U S Constitution. You are further urged to address the founding general Christian principles which structure the U S Constitution according to the U S Supreme Court in Holy Trinity and later cases throughout history, including Sydell Stone, 1980. In essence, these cases addressed the fact that Christian Ethics guide public administration . . ."

Documents from high official authorities supporting the above contentions are available.

A Christian Nation . . .

Is Entitled to a . . .

Christian Administration!

. . propoundings of U.S. Supreme Court

CITIZENS FOR GOD & COUNTRY
P.O. Box 137
McLean, Va. 22101

A Dedicated volunteer service to our General Christian Founding Principles

"WE ARE A CHRISTIAN NATION"

A CHRISTIAN NATION IS ENTITLED TO A CHRISTIAN ADMINISTRATION!! Every free nation is founded to secure its culture. Its religious values structure its Constitution, Institutions, and Laws to secure essential order for all liberties. Abandonment of these values brings downfall, for the history of man and the history of religion are inseparable! For years the United States has been battered by infiltrating Anti-Christian movements, imposing illegal turbulence to our moral order. President Carter, in 1979, alerted the No. 1 risk to national security—Values, Values! Pleading that every house come to the aid of the White House to restore Values, he echoed pleadings of late Senator H. Humphrey, "We must all abandon corruption and greed and dedicate to Morality." The crisis is verified by sky-rising crime, youth ills, and suicides—plotted self-destruction.

Our national Values were propounded by the U.S. Supreme Court in Holy Trinity v. U.S.; McGowan, and Zorach: "WE ARE A CHRISTIAN NATION . . . no purpose of action against religion can be imparted to any legislation, State or Nation, because this is a religious people . . . enact statutes for government . . . not against the Christian Faith . . . tend to the propegating of the Christian religion . . . bring infidels and savages unto human civility, a quiet and settled government . . . the Mayflower sailed . . . for advancement of Christian Faith . . . in the presence of God . . . for better ordering and preservation ...enter into confederation to maintain and preserve the liberty and purity of the Gospel of Lord Jesus...Almighty God being the only Lord of Conscience...presence of the divine in human affairs . . . official undertaking of moral responsibility involves, "So help me God". It is the duty of every man to worship God . . . no person ought by law be molested in religious liberty . . . unless under color of religion he disturb moral order, peace, and safety of society, or infringe the laws of morality or injure others natural, civil or religious rights. No one shall be incompetent as a witness or juror on account of religion, provided he believes in the existence of God and that he will be held accountable morally for his acts and be rewarded or punished in this world or the hereafter.

"Religion, Morality and Knowledge being necessary to good government, the preservation of liberty and happiness of mankind, schools and means of education shall forever be encouraged . . . THERE IS NO DISSONANCE IN THESE DECLARATIONS; there is universal language pervading them all, having one meaning; they affirm and reaffirm that this is a religious nation. These are not individual sayings, declarations of private persons; they are organic utterances; they speak the voice of the entire people . . . Christianity, general Christianity is, and always has been a part of common law . . . not Christianity with established church and tithes, and spiritual courts; but Christianity with liberty of conscience to all men."

". . . in common with people of the nation, State of Pennsylvania professes the general doctrines of Christianity, as the rule of faith and practice; to scandalize these doctrines is extremely impious, and in respect to obligations due to society, is a gross violation of decency and good order. The free, equal and undisturbed enjoyment of religious opinion, whatever, and free and decent discussions on any such subject, is granted and secured; but to revile, with malicious and blasphemous contempt, the religion professed by almost the whole community is an abuse of that right. We are a Christian people, and morality of the country is deeply ingrafted upon Christianity, not the worship of or doctrines of imposters. Passing into view of American life, in law, business, customs and society, the same truth is recognized. THIS AND MANY OTHER MATTERS WHICH MIGHT BE NOTICED ADD A VOLUME OF UNOFFICIAL DECLARATION TO THE MASS OF ORGANIC UTTERANCES that **THIS IS A CHRISTIAN NATION."**

Other Supreme Court Cases addressed values: "OFFICIAL ENCOURAGEMENT OF LOVE OF COUNTRY AND BELIEF IN GOD . . . Secularism, and Secular Passivity (failure to correct Secularism) are Unconstitutional... Neutrality "Within the Christian Community", not Separation . . . it is the duty of government to deter no-belief religions . . . facilities of government cannot offend religious principles, place in jeopardy, or commit hostility . . . Atheists go their own way . . . they do not interfere with Theistic beliefs." U.S. Supreme Court

Engel, Abington, Reomer, Everson. (May be reproduced with courtesy acknowledgment.)

You can request copies of these cases from your congressman

"PLURALISM AND DIVERSITY" are accommodated through individual rights, private means, but the government remains loyal to Christian ethics for Constitutional stability. Destroy Christian values, and none shall know freedom!

Library
Supreme Court of the United States
Washington, D. C. 20543

March 26, 1976

In your letter dated March 20, 1976, you asked for a copy of the Holy Trinity Church case. The full title of the case is Church of the Holy Trinity v. United States, reported in volume 143 United States Reports 457 (1892).

Unfortunately, the case was decided so long ago that we do not have loose copies of the opinion which we can give you. However, you should be able to find it in any law library to which you have access.

The United States has been referred to as a Christian Nation also in the following opinions of the Court:

Zorach v. Clauson,
343 U.S. 307 at 313 (1952);

McGowan v. Maryland,
366 U.S. 420 at 561 (1961).

Very sincerely yours,

Edward G. Hudon,
Librarian.

The Pledge of Allegiance, like the prayer, recognizes the existence of a Supreme Being. Since 1954 it has contained the words "one nation under God, indivisible, with liberty and justice for all." 36 U. S. C. 172. The House Report, recommending the addition of the words "under God" stated that those words in no way run contrary to the First Amendment but recognize "only the guidance of God in our national affairs" H. R. Rep. No. 1693, 83d Cong., 2d Sess., p. 3. And see S. Rep. No. 1257, 83d Cong., 2d Sess. Senator Ferguson, who sponsored the measure in the Senate, pointed our that the words " In God We Trust" are over the entrance to the Senate Chamber. 100 Cong. Rec. 6348. He added:

"I have felt that the Pledge of Allegiance to the Flag which stands for the United States of America should recognize the Creator who we really believe is in control of the destinies of this great Republic.

"It is true that under the Constitution no power is lodged anywhere to establish a religion. This is not an attempt to establish a religion, it has nothing to do with anything of that kind. It relates to belief in God, in whom we sincerely repose our trust. We know that America cannot be defended by guns, planes, and ships alone. Appropriations and expenditures for defense will be of value only if the God under whom we live believes that we are in the right. We should at all times recognize God's province over the lives of our people and over this great Nation." *Ibid.* And see 100 Cong. Rec. 7757 *et seq.* for the debates in the House.

The Act of March 3, 1865, 13 Stat. 517, 518, authorized the phrase "In God We Trust" to be placed on coins. And see 17 Stat. 427. The first mandatory requirement for the use of that motto on coins was made by the Act of May 18, 1903, 35 Stat. 164. See H. R. Rep. No. 1106, 60th Cong., 1st sess.; 42 Cong. Rec. 3384 *et seq.* The use of the motto on all currency and and coins was directed by the Act of July 11, 1955, 69 Stat. 290. See H. R. Rep. No. 662, 84th Cong., 1st Sess.; S. Rep. No. 637, 84th Cong., 1st Sess. Moreover, by the Joint Resolution of July 30, 1956, our national motto was declared to be "In God We Trust," 70 Stat. 732. In reporting the Joint Resolution, the Senate Judiciary Committee stated:

"Further official recognition of this motto was given by the adoption of the Star-Spangled Banner as our national anthem. One stanza of our national anthem is as follows:

'O, thus be it ever when freemen shall stand
Between their lov'd home and the war's desolation:
Blest with vict'ry and peace may the heav'n rescued land
Praise the power that hath made and preserved us a nation'
Then conquer we must when our cause it is just,
And this be our motto—"In God is our trust."
And the Star-Spangled Banner in triumph shall wave
O'er the land of the free and the home of the brave.'

"In view of these words in our national anthem, it is clear that 'In God we trust' has a strong claim as our national motto." S. Rep. No. 2703, 84th Cong., 2d Sess, p. 2.

(ABBINGTON V. SHEMPP)

U.S. SUPREME COURT DECISIONS (PHAMPHLETS AVAILABLE)

Series A Christian Nation is Entitled to Christian Administration

Series B Neutrality, Neutrality, "Within Christian Community," Not Separation

Series C Laws of the Land for Christian Administration

NEUTRALITY,

NOT SEPARATION.....

BUT NEUTRALITY...

"WITHIN THE CHRISTIAN COMMUNITY"

Decisions of U.S. Supreme Court

CITIZENS FOR GOD & COUNTRY
P.O. Box 137
McLean, Va. 22101

A Dedicated volunteer service to our General Christian Founding Principles.

"NEUTRALITY-NOT SEPARATION"

JEFFERSON'S WALLS OF SEPARATION did not separate the nation's legal structure from religious principles. "And let us with caution indulge the supposition that morality can be maintained without religion. Whatever may be conceded the influence of refined education on minds of peculiar structure, reason and experience forbid us to expect the national morality can prevail in exclusion of religious principles." George Washington, Farewell Address, Abington V Schempp, US 203, (1963). Lib of Congress copy, 57, n. Administering in 1977 to the Laws of England, Justice Matthew Hale thundered, "Blasphemy not only is an offense to God and Religion, but a crime against law, State and Government, because Christianity is a parcel of the laws of England." Similarly, the United States is legally structured, as all free nations upon religious principles, ours being Christian Ethics. Thus the Constitution, based on Biblical morality, serves the General Welfare, Justice, Tranquility, and Blessings of Freedom, not VICES.

EVERSON V Board of Education 330, US 1 (1947) 36, 40, 52, 53, 54, n; p 65. Jefferson's Walls of Seperation were defined in his Caveat to the Virginia Assembly, Bill of Assessments, tithes, for Christian Sectarian Schools. Through Walls of Separation, Jefferson resisted Christian SECTARIANISM, to "abolish all distinctions by government of pre-eminence amongst the different societies of communities of Christians...a tendency to usurp on one side or another, or to a corrupting coalition or alliance between them, will be best garded against by...abstinance of Government interference in any way beyond necessity of preserving public order, and protecting each sect against trespasses on its legal rights by others". Jefferson advocated General Christianity for moral order, good government and happiness of mankind, but opposed Christian SECTARIANISM, relating his Walls of Seperation to NEUTRALITY, "WITHIN THE CHRISTIAN COMMUNITY", not to Secularism.

According to Justice Rutledge, "...authority which can establish Christianity, in exclusion of all other Religions may establish with the same ease any particular sect of Christians, in exclusion of all other Sects." Thus, the Jeffersonian Walls of Separation, by means of NEUTRALITY "WITHIN THE CHRISTIAN COMMUNITY", prevented the State of Virginia from departing from our founding principles as propounded by the US Supreme Court in—

HOLY TRINITY, V U.S. 143, pp 460-471, "WE ARE A CHRISTIAN NATION...NOTHING BE DONE TO HURT CHRISTIANITY...LEGISLATE' PROPAGATE AND SECURE THE CHRISTIAN FAITH. Not Christianity with established church and tithes and spiritual courts; but Christianity with liberty of conscience to all. General Christianity is and always has been a part of common law...to revile with malicious and blasphemous contempt, the religion professed...is an abuse of that right. We are a Christian people, and morality of the country is deeply ingrafted upon Christianity, not the worship of or doctrines of impostors. Passing into view of American life, in law, business, customs, and society, the same truth is recognized. This and many other matters which might be noticed add a volume of unofficial declarations to the mass of organic utterances that THIS IS A CHRISTIAN NATION!"

The timely success of Jefferson's NEUTRALITY "WITHIN THE CHRISTIAN COMMUNITY" found outreach into the—

FIRST AMENDMENT, U.S. CONSTITUTION— "Congress shall make no law respecting the establishment of religion, nor prohibit Free Exercise thereof." This Establishment Clause NEUTRALITY to secure religious freedom effected the ratification of the Constitution which had been intercepted until the inclusion of this Clause. Religion was not defined, because CHRISTIANITY WAS IT! In this Amendment the nation professed its belief in God, recognizing his supremacy and acknowledging the right of man to communicate with God with Constitutional protection, as a right God-given and Unalienable.

Thus, the First Amendment asserts NEUTRALITY, forbidding prohibition of Free Exercise by government "making law" to establish religion. Freedom of religion is protected by Neutrality; Separation does not protect, thus it is unConstitutional!

Copyright pending, reprint permitted with courtesy acknowledgement. May 1980.

The First Amendment "prohibition" by NEUTRALITY is defined in great detail in—

ABINGTON V Schempp, p. 22, 71, 1973 - "SECULARISM IS UNCONSTITUTIONAL...preferring those who do not believe over those who do believe-...It is the duty of government to deter no-belief religions...facilities of government cannot offend religious principles...Official encouragement of love of country and belief in God...untutored devotion to the concept of Neutrality can lead to non-interference and non-neutrality but also brooding and pervasive devotion to the secular passive and even active hostility to religion. **Such results are prohibited by the Constitution**...the fullest realization of true religious liberty requires that government neither engage in nor compel religious (Sectarian) practices; that it effect no favoritism among **Sects** or between religion and nonreligion, and that it **work deterrence of no-belief religions**." Throughout the case, Neutrality confines government and forbids Secularism by "making laws". The obvious error of Separation is revealed as totally unrelated to General Christianity which "is and always has been a part of common law, deeply engrafted...in law, business, customs, and society".

ENGEL V VITALE, US 469 US, 11, 14n, (1962) distinguishes that the case related to "making laws" with attorney admission "to promote religion", without any compelling interest to justify. The footnote clarifies, "This case has nothing to do with official encouragement of love of country...and belief in God" (administrative prayers for moral order). "The Pledge of Allegiance...has nothing to do with establishment of religion. It relates to belief in God, in whom we sincerely repose our trust. We know that America cannot be defended by guns, planes, and ships alone. Appropriations and expenditures for defense will be of value if the God under whom we live believes that we are in the right. We should at all times recognize God's province over the lives of our people and over this great Nation." 100 Cong. Rec. 7757, House Debate, Abington.

ROEMER 74-730 US, 7, 1976 reasserted Court Neutrality as "SEPARATION NEVER INTENDED".

BAKKE, 76-811 US, 1978, "We do not cater to shifing political party whims of the times, for they are contrary to the stability of the Constitution".

STATE CONSTITUTIONS compel Godly living for the quality of life, public conscience for moral order, for liberties for all. Thus, again, Separation falsehoods are exposed.

KEVIN WALDER V FIRST ORTHODOX PRESBYTERIAN CHURCH, San Fran; California State Supreme Court, 760-028, 9, (1980). "FREEDOM OF RELIGION IS SO FUNDAMENTAL TO AMERICAN HISTORY THAT IT MUST BE PRESERVED EVEN AT THE EXPENSE OF OTHER RIGHTS WHICH HAVE BECOME INSTITUTIONALIZED BY THE DEMOCRATIC PROCESS."

☆☆☆☆☆☆☆

GENERAL COMMENTS—In spite of historic and judicial actions securing Religious Freedom, corrupt coalitions illegally coerce Secularism by SEPARATION FALSEHOODS with strategies, "confuse to dominate". Though billions of HEW frauds are verified by GAO, Congress continues legislative pay-offs to Labor Unions for political debts which destroy purity of free elections. By bribes to school personnel and election candidates, the union exploits to destroy the Balance of Powers. Political incumbents comply with threats and rewards which secure career enhancement. All this with supporting union personnel in HEW advance the Anti-Christian movement. Article IV, Sec. 4, US Constitution mandates, "GUARANTEE A REPUBLICAN FORM OF GOVERNMENT AND SECURE AGAINST INVASIONS." While Everson and Abington addressed "corrupt coalitions" and Secularism, no case has yet to address the total plots, political brutalities, against Christian founding principles! Destructive laws continue to be made by Congress under guises of "education and training", infiltrating every institution for Secularism! Criminal denial of others rights, denial of equal protection, and Seditious Conspiracy are accountable to Criminal Code 18, Sec. 241-242; 2000d; and 2384. Nationwide outcries to Congress bring shifted blame to another and still another, even to the Supreme Court for destructive Appellate Power against prayers which were not ruled out but subjected to Court guides for NEUTRALITY! The conspiracy to destroy the entire First Amendment has been supported by exploitations of teachers, subverted PTA, and Congress, overpowered by union threats and bribes. Even the Department of Justice, repeatedly notified of the conspiracy, submits to political domination. Until the entire conspiracy is addressed, the entire First Amendment remains in danger. Total Judicial, Legislative, and Executive resolutions by a United Front are essential. Most alarming is the "unobligated-to-union-candidates", who soon harmonize for union "protection" for re-election. The most potent of all defenses is an attack against "plotted" cases which seek judicial resolutions suitable to the conspiracy. The issue of Neutrality and Secularism are inseparable! An informed public with organized and courageous strategies can make the difference.

Copies of cases can be obtained from your Congressman.

☆☆☆☆☆☆☆

A Republican Form of Government forbids imposing rights of minority above rights of majority.

☆☆☆☆☆☆☆

There is nothing wrong in facing reality that citizenship is in CHRISTIAN NATION!

☆☆☆☆☆☆☆

US Supreme Court Decisions—Pamphlets 2 for $1.00

Series A	CHRISTIAN NATION, CHRISTIAN ADMINISTRATION
Series B	NEUTRALITY, NOT SEPARATION
Series C	LAWS OF THE LAND - CHRISTIAN ADMINISTRATION
Series D	SCHOOL PRAYERS AND BIBLE PERMITTED

FAVORABLE GUIDES PRAYER, BIBLE, NEUTRALITY . . .

"WITHIN THE CHRISTIAN COMMUNITY"

U.S. Supreme Court Decisions
and
Appellate Power Cautions

CITIZENS FOR GOD & COUNTRY
P.O. Box 137
McLean, Va. 22101

A Dedicated volunteer service to our General Christian Founding Principles

PRAYERS, BIBLE, NEUTRALITY . . .

For years the public has been misinformed on Separation of Church and State. By Separation Falsehoods, school prayers are out and secularism is in. Resulting inner moral decay compelled President Carter to proclaim a National Moral Crisis! 1979. A review of facts reveals the following. The FIRST AMENDMENT compels Neutrality, not Separation. "Congress shall make no law respecting establishment of religion, nor prohibit Free Exercise thereof." Neutrality secures God-Given, unalienable rights for Free Exercise. Neutrality forbids "prohibition" of prayers for those who wish to have them. Based on Biblical Morality, the Constitution protects BLESSINGS OF FREEDOM, not Vices for they disturb the moral order which secures liberty for all. All State Constitutions in harmony with the Federal Constitution acknowledge existence of God, and compel Godly living, for the "history of man and the history of religion are inseparable." As in all free nations, founding religious principles guide law and jurisprudence—ours being General Christian. Where conflict is with Christian and non-Christian belief, Christianity prevails, for we are founded according to the Supreme Court to "legislate, propagate, and secure the General Christian Faith," Holy Trinity p. 471. What is Anti-Christian is Anti-Semetic, for the Christian Faith includes the Old Testament. Constitutional morality is Biblical morality; therefore, those who take oath to defend the Constitution are obligated to secure the General Christian Faith. SEPARATION is a perpetuated fraud, whereas Neutrality is Constitutional and consistent with Supreme Court decisions. Freedom of Religion, secured by Neutrality, nurtures public conscience for lawful living, moral order and liberties for all. To impose Separation denies this nurturing. "It is better to be governed by conscience than to be ruled by tyranny." For this very purpose all free nations secure and encourage Religious Freedom! "Diversity and Pluralism" are by individual rights, private means. "Changing Times" were addressed by the Supreme Court, Bakke. "We do not cater to shifting political party whims of the times, for they are contrary to the stability of the Constitution!" Justice is based on fixed values, Christian Ethics. According to the Supreme Court, we are "founded to legislate, propagate, and secure the Christian Faith!"

EVERSON, a case relating to the Jeffersonian Walls of Separation on "making law" for tithes for religious schools, defined separation as "NEUTRALITY WITHIN THE CHRISTIAN COMMUNITY," i.e., non-sectarianism. "Who does not see that the same authority which can establish Christianity, in exclusion

of all other religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects?" Everson, p 65, also Engel, p 8.

ROEMER in 1976 reasserted Neutrality, "SEPARATION was never intended and never required. The State can call on a cleric or cleric order to perform strictly secular duties."

ENGEL v VITALE in 1962 was plotted for "Separation" to support the springboard for fanatical atheism. Defending attorneys admitted, "Law was made to promote religion", failing to present compelling interest which obligated the Court to address the First Amendment. Though the Court in footnote stated the case had "nothing to do with love of country and belief in God," voluntary prayers, subversives omitted these facts to suit Separation Fraud. As in EVERSON, General Christian Foundations, non- sectarian security, was recited.

ABINGTON v SCHEMPP AND MURRAY was another plotted case to reinforce Engel. The case was heard on demurrer, nothing binding on defendant. One plaintiff withdrew children from school, the other failed to prove coercion. The Court concluded, "We would err if we 'assumed' coercion in absence of evidence. Both cases were wholly inadequate to support an informed and responsible decision." The cases were remanded to lower court for further hearings, nothing developed. Within these concerns the Court provided adequate guides for prayers, Bible and Neutrality. The Court declared "Secularism unconstitutional . . . duty of government to deter no-belief religions; government cannot offend religious principles", Christian Ethics. Harmonizing with founding principles which guide our laws and jurisprudence, U. S. 36, 172 directs "KEEP LIVES AND NATION UNDER GOD AT ALL TIMES" Neutrality "Within the Christian Community" the Court's mandate for government administration, to secure moral order for lawful Individual Right, Private means, for all freedoms!

SUPREME COURT GUIDES:

1. General Christian Nation, non-Sectarian (not Separation) Engel p. 8; Abington 20, 33, 46, 57n.
2. Neutrality, Engel 12, 15; Abington 16, 22, 24, 33, 39, 48, 58, 65, 66, 71, 75.
3. Secularism, Secular Passivity are unConstitutional. Duty of Government to deter no-belief religions. Abington 28, 71.
   Atheists go their own way. Engel 12, Abington 28.
4. Facilities of Government cannot commit inhibition, handicap, hostility, jeopardy, impediment, impairment, prohibition, or offend religious principles. Abington 32, 42, 55, 66, 72, 73, 74.
5. Parents' undebatable rights, Abing. 37, 38, 41, 50.
6. Prayers for discipline, harmony, unity, promotion of authority, Abington 56, 57.
   "Official encouragement of love of country and belief in God", Engel 8n, 12; Abington 69, 72; "legislated" prayer denied because of admission of promotion of prescribed "religion" without compelling interest (to nuture public conscience for lawful living for good government and moral order essential for survival for free government). Abington 67.
7. Bible for moral inspirations. Abington 20, 27, 52, 55, 67. Rigid limits on mention of God, Bible, in classroom fraught with danger. Abington 67.
8. Superintendent's authority not usurped. Abington 56, 67.
9. Release Time for church training. Abington 47.
10. "We Are a Religious People", Abington 31.
11. Lives and Nation under God at all times. Engel iin.
12. Freedom of Religion, "unless under color of religion one disturbs moral order, peace and safety of society.
    Belief need not be proven to justify orderly action, Abington 41, 44, 39.
13. Free Exercise, central issue of First Amendment. Abington 71, 74.
14. Religious means can be used where secular means fail. Abington 32, 49, 57, 64.
    (Legislated prayer permitted where compelling interest is shown.)
15. First and Fourteenth Amendment Security for Free Exercise. Abington 21, 23, 43, 44, 73.
16. National morality and religion inseparable. George Washington, Abington 57.
17. Not every religious involvement in public life violates First Amendment. Abington 64.
18. Temporary use of public buildings for religious use. Abington 66.

APPELLATE POWER—Many lower Court decisions vary, either favoring or disfavoring prayers. Review of the cases as all morality cases, reveals failures due to vagueness of local laws, failure to present adequate compelling interest, outright legal incompetence, or subversion by Anti-Christian Atheists. By conspiracy and irresponsible momentums, blame is continually fixed on the Supreme Court, because its total Guides on Church-State have yet to be presented. NEUTRALITY by Court Guides compels "voluntary, no sectarianism, no hostility, no secularism, and no

Request copy of cases from your Congressman, page numbers relate to Library of Congress copy of cases.

entanglements (funding or administrative)." The Court, satisified with its guides permitting prayer and Bible, has refused to hear further cases, so what benefit Appellate Power? Shifting of jurisdiction to State Courts, who already have legal authority for prayer action, negates First Amendment protection! Again, what benefit Appellate? Since the Courts did not rule out prayer, but subordinated them to guides of Neutrality, not Separation, again what benefit Appellate? According to Attorney General Bell, "Appellate" is dangerous, "destructive" of First Amendment protection! The Senate ignored his strong urging not to accept the Helms' Amendment, The Senate erred, accepting Christian Front petitions signed by petitioners misinformed on the lack of value and dangers of Appellate (State Court Jurisdiction).

Christians have yet to be informed that the Supreme Court decisions permit prayers; that Appellate will not return them because of usurping subversives; that they will be pitted in endless fights in 50 States with nullified First Amendment Protection. To the contrary, petitioners did not comprehend Appellate. They believed their signatures were for immediate return of prayers, by whatever the name of legislative action. They did not realize that Appellate is for political profit! It was imperative that Appellate signatures not contribute to continuing abandonment of Congressional Ethics, competence, and all-American Patriotism! Among more than 900 prayer bills in Congress since 1962, none recited the Courts' Guides! Because of this urgency, the Court Guides, and Attorney General Bell's statement are presented.

APPELLATE POWER

OFFICE OF THE ATTOURNEY GENERAL,
Washington, D.C. April 9, 1979.

Hon. Abraham Ribicoff,
Chairman, Committee on Government Operations,
U.S. Senate, Washington, D.C.

Dear Mr. Chairman: . . .

Article III of the Constitution extends the "judicial power of the United States" to "all cases . . . arising under this Constitution." The Supreme Court is given appellate jurisdiction over all cases within that judicial power "with such exceptions and regulations as Congress shall make." U.S. Const. Art. III, §2 cl. 3. Some commentators have argued that this "Exceptions" clause gives Congress plenary power over the Supreme Court's appellate jurisdiction, even to the point of removing constitutional claims from the Courts's review. Other commentators, however, believe such a reading of the clause to be antithetical to principles at the heart of the Constitution. *They point to the Supremacy Clause which establishes the Constitution as a supreme uniform law, binding on both the Federal courts and the courts of every state. U.S. Const. Art. VI. cl. 2.* To permit Congress to "except" a constitutional issue from the Supreme Court's jurisdiction, these commentators argue, would destroy the uniformity sought by the Framers of the Constitution. Rather than one Constitution on an issue, we would have fifty. It has further been argued that "excepting" a constitutional issue from the Court's jurisdiction would violate the due process guarantee of the Fifth Amendment . . .

I believe that any proposal to eliminate the appellate jurisdiction of the Supreme Court with respect to constitutional claims raises a serious constitutional issue about the extent of Congress' power over the appellate jurisdiction of the Supreme Court. However intrigued we may be by such questions, we should not purchase answers to them at the price of an unnecessary and possibly unfortunate confrontation between the Congress and the Court.

Aside from the constitutional problems which Senator Helms' proposal raises, I believe that enactment of this legislation would be wrong as a matter of public policy for the following reasons: First, it is undesirable to deal with highly specialized, complex and controversial constitutional issues through the device of eliminating an opportunity for a full and fair airing of the issues within the Federal judicial structure. Federal law on this *point would be frozen* in whatever state it happened to be at the moment; persons dissatisfied with current Federal law on such issues would be foreclosed from the possibility of any further favorable development within the Federal system. It would not be appropriate to deny access to the Federal courts with regard to such constitutional issues.

Second, the proposal chills the ability of the Federal courts to deal with Federal constitutional issues. Matters of constitutional interpretation and adjudication are, of all justiciable issues, pre-eminently within the province of the Federal judiciary; yet a proposal to eliminate such matters from their jurisdiction suggests that the Federal courts are not fit to consider them.

Third, the proposal would run afoul of the public interest in affording at least the opportunity for a *uniform*, definitive and dispositive nation-wide resolution of issues of constitutional magnitude. By eliminating the jurisdiction of the Supreme Court, the constitutional issues presented by such cases would

be left to the highest courts of the fifty states and the District of Columbia, thereby raising the specter of a multiplicity of views as to the proper interpretation of the Constitution.

Fourth, the amendment as presently drafted is restricted to cases involving "voluntary" prayers in public schools and public buildings. In order to determine whether a federal court's jurisdiction is foreclosed by the amendment, therefore, it would be necessary for the court to adjudicate the factual issue of whether the particular prayer practice is itself voluntary. Rather than eliminating the issue of school prayer from the courts, the amendment would virtually assure the involvement of the courts in deciding not only the fundamental constitutional issue of Congress' power to affect the narrower jurisdictional question of wheter any particular practice falls within the proscription of the amendment.

For the foregoing reasons, therefore, I would strongly urge the Senate to reject the Helms amendment."

GRIFFIN B. BELL,
Attorney General.

(Congressional Record, Vol. 125, No. 45, April 9, 1979)

GENERAL COMMENTS–Regardless of Court Guides, Anti-Christian Atheistic Lobbies ruthlessly coerced Secular Humanism with Federal Aid to Education and subversive Grants. Congressional Record, January 10, 1963, FBI Agent, Cleon Skousen: "Control schools and curriculum for Communism. Control teacher's Unions (and PTA); break-down morality; eliminate prayer by SEPARATION . . ." The inseparable Prayers out and Atheism (Humanism) in is a threat to moral order! Adequate legal protection prevails awaiting strategic application, through Court guides and U.S. Criminal Code 18, Sec. 241-242; 2000d; 2384; denial of others rights; equal protection; and seditious conspiracy. Sufficient evidence prevails to support contentions of "corrupt coalitions." (Madison, Everson p. 40n.) Impossible or not, it is urgent to negate the Teachers Labor Union Charters for subersive Atheism, violates First Amendment Neutrality! Abuse of government employees to effect the outcome of public elections is unConstitutional. Yet, teachers and students by tax-funded projects, by frauded Grants provide organized campaign work for profit to NEA. Once the purtiy of Free Elections is restored, Congress will not be obligated to Totalitarian Labor Unions. Bribes and threats which also destroy First Amendment Neutrality for secured moral environment must address criminal liability. A fully informed public can make the difference!

****

All Christian Trinitarians basically agree on Biblical theology for its common source, Christ and Church. Within General Christianity, varied Sectarianism prevails. The misrepresented Jeffersonian Walls of Separation related to this Sectarianism. "Within the Christian Community" (Neutrality) Everson, 36, 52, 54n; p 65. From General Christianity flow religious values for moral order, guiding laws and jurisprudence, a respective structure in all free nations, securing pluralism, by Individual Rights, private means. School prayers identify man's and nation's relation to God seeking guidance in public affairs, elevating the quality of moral life, a part and parcel of our founding fathers' intentions. Religion by government is limited to "good government . . . and moral order to protect against invasions . . by corrupt coalitions. Everson 40n.

Special Packet, $15.00 Selected pages from Court cases, marked up, supporting guides listed herein.

Documents Packet, $3.00 Letters from Senators Bayh and Kennedy, voluntary prayers not out.

Library of Congress Report, excerpts, "WHAT IS PERMITTED".

ACLU Headquarters, N.Y. letter admitting no objections to Bible Reading for moral inspirations; also policy and procedure returning Bible to Fairfax County, Va. Schools. A REAL MAGIC FOR SWIFT RETURN OF BIBLE!

Hope Bulletin, Details of subversion which put out prayers.

Copy of Ten Commandments.

US Supreme Court Cases–pamplets 2 for $1.00

Series A CHRISTIAN NATION, ENTITLED TO CHRISTIAN ADMINISTRATION

Series B NEUTRALITY, NOT SEPARATION, NEUTRALITY "WITHIN CHRISTIAN COMMUNITY"

Series C LAWS OF THE LAND SECURING CHRISTIAN NATION

Series D FAVORABLE GUIDES TO PRAYERS, BIBLE, NEUTRALITY

Copyright pending. May be reproduced with courtesy acknowledgement. June 1980